TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~250.~~ 130

JOSÉ RIBON, JOSÉ MUNOZ, RICHARD H. CLARK, SYLVESTER MARSH, WILLIAM SOHIER, APPELLANTS,

vs.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY AND THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 26, 1871.

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1 Pleas in the circuit court of the United States for the district of Iowa, at a term thereof, begun and holden in the United States court-house, in the city of Des Moines, in said district, before the Honorable Samuel F. Miller, justice of the United States Supreme Court, and the Honorable John F. Dillon, judge of the United States circuit court for the eighth circuit, on Thursday, the eighteenth day of May. A. D. 1871, and in the 95th year of the independence of the United States.

2 Be it remembered that heretofore, to wit, on the seventeenth day of September, A. D. 1871, came José Ribon and others, by Grant & Smith, their attorneys, and filed in the clerk's office of the said circuit court their petition against the Chicago, Rock Island and Pacific Railroad and others, which said petition is in words and figures following, to wit:

3 Circuit court of the United States for the district of Iowa.

JOSÉ RIBON, JOSÉ MUNOZ, RICHARD H. Clark, et als. *vs.* THE CHICAGO, ROCK ISLAND AND PACIFIC Railroad Company and others.	In equity.

To the judges of the circuit court of the United States for the district of Iowa:

José Ribon and José Munoz, citizens of the State of New York, Richard H. Clark, a citizen of the State of New York, Sylvester Marsh, a citizen of the State of Hampshire, and W'm Sohier, a citizen of the State of Massachusetts, bring this bill in equity against the Chicago, Rock Island & Pacific Railroad Co., a corporation created by and a citizen of the State of Iowa, and the Mississippi and Missouri Railroad Co., a corporation created by and a citizen of the State of Iowa.

4 And thereupon the said plaintiffs aver that said Mississippi and Missouri Railroad Co. is a corporation created by the general laws of the State of Iowa in the year 1852, to build a railroad from Davenport, on the Missisippi River to some point at or near Council Bluffs, on the Missouri River; that said corporation, prior to October, 1865, had acquired from the United States and the State of Iowa a land grant of about six hundred thousand acres of land in the State of Iowa, and constructed about one hundred and forty-two miles of railroad on its main line from Davenport to Kellogg, and about fifty m'les on a branch called the Oskaloosa division, running from a point on the main line called Wilton, by Muscatine, to Washingt on, in Washington Co., Iowa.

That said corporation, in the building of its road, had executed five mortgages—one for a million of dollars on the first division of its road and all its machinery, from Davenport to Iowa City; second, a second mortgage on the same for four hundred thousand dollars; a

5 third mortgage on the Oskaloosa division for five hundred and ninety thousand dollars; a fourth on the division from Iowa City to Council Bluffs, including a land grant of about five hundred thousand acres for three million six hundred and twelve thousand dollars, called first land-grant construction mortgage; and a fifth on the whole road, equipments, land and property of every description for six hundred

and ninety-one thousand dollars, called second construction land-grant mortgage.

The said corporation had also issued about three millions and a half of stock from its organization until 1865, in shares of one hundred dollars each.

In October, 1865, the said corporation had become embarras'ed, and neglected to pay the interest on its various classes of bonds which thereby became liable to foreclosure for the whole debt.

At a meeting of certain stock and bond holders, held in New
6 York on 20th Oct., 1865, it was resolved to sell out the entire property to the Chicago and Rock Island Railroad Company, (now Chicago, Rock Island & Pacific Railroad Company,) for the sum of five and a half millions of dollars,—which was to be divided up among the bond and stock holders according to the following scale:

To first-mortgage bondholders par and interest to July 1st, 1865	$1,256,490
To second-mortgage bondholders, $400,000 at 80 per cent.	$320,000
To third-mortgage, Oskaloosa division, $665,939 at 62½ p'r c't.	$416,212
To fourth-mortgage first land-grant construction, $3,878,550 at 70 per cent.	$2,714,635
To fifth-mortgage second-construction bonds, $693,764 at 30 per cent.	$208,129
To $3,452,500 of stock at 16 p'r c't.	$552,400
To foreclose	32,134
	$5,500,000

Messrs. Geo. W. Stanton, jr., Jno. Elliott, and Blakely Wilson were appointed at this meeting a committee to arrange with the Chicago and Rock Island Railroad Company the mode and terms of payment,
7 and to make an arrangement with some trust company to receive the bonds and stock of parties assenting to the sale, and issue certificates therefor, stating what the holder of said certificate was entitled to receive.

On the first day of November, 1865, a contract was entered into by the said Mississippi and Missouri Railroad Company, and Chicago and Rock Island Railroad Company, a corporation created by the laws of Illinois, in pursuance of the proceedings of the meeting of 20 Oct.; that the Mississippi and Missouri Railroad was to take proper steps, with all possible dispatch, to cause the mortgages on its whole line, lands, depots, equipments, &c., to be foreclosed and its entire property to be sold so as to transfer a perfect and unincumbered title to such incorporated company in Iowa as the Chicago and Rock Island Company might designate to become the purchaser and owner thereof.

The Chicago and Rock Island Railroad Company was to cause to be incorporated in Iowa a company which should purchase said
8 property and pay for it five and a half millions of dollars, according to the above scale, either in the bonds of the new company, guaranteed by the Chicago and Rock Island Company, or of a consolidated company, to be composed of the two, the Chicago and Rock Island Company to have the possession of the road from date of the contract, and to pay interest on the purchase at the rate of seven per cent. from the 1st of December, 1865.

The said committee, Stanton, Elliott, and Wilson, made a contract with all the stock and bond holders who chose to assent thereto, reciting

the terms of sale, and requiring all such stock and bond holders as did assent thereto to authorize said committee to foreclose the mortgages on the property, complete the sale, and assent to all the terms required by said meeting and contract as to the division of the property, and excluding from the benefits thereof all bond and stock holders who did not assent to it.

9 All the bondholders but those holding about one hundred and eighty-five thousand dollars' worth, did assent to the said terms and sign the said contract, and deposit their bonds with the Union Trust Company, and take their receipt for the same, specifying what they were to have.

All the stockholders but about six thousand shares also signed said agreement assenting to the terms of sale.

To cut off the rights of non-assenting stock and bond holders, a foreclosure and sale of all the property was necessary, and this the said committee, as soon as they got control of a majority of the bonds, undertook to do.

Before the said committee, Stanton, Elliott, and Wilson, had taken any proceedings for that purpose, in February, 1866, Messrs. F. P. James & Co., of New York, holding about six hundred thousand dollars of the second construction land-grant bonds, the last mortgage on the whole road, refused to assent to the terms of sale whereby their

10 bonds were scaled to thirty per cent., and commenced proceedings in Iowa to foreclose their mortgage through the trustees thereof, Thomas C. Durant and others, and the Chicago and Rock Island Railroad Company, to arrest the proceedings of F. P. James & Co., bought them out at forty-five per cent., and one-half of the thirty-two thousand dollars devoted by the resolution of 20th October, 1865, to foreclosure expenses, and having obtained possession of his bonds, assented with them to the terms of sale, executed the agreement of the stock and bond holders to the terms of sale of 20th of October, 1865, and signed an agreement with the other assenting stock and bond holders, called the Peter Myers agreement, and thus gave to the trustees or committee-men of the stock and bond holders, Messrs. Stanton, Elliott, & Wilson, the control of a majority of all the bonds in all the mortgages.

The foreclosure suit of Thomas C. Durant, Jacob S. Wetmore,

11 and Robert B. Minturn, trustees of the last or second construction-mortgage was then controlled by said trustees, Stanton, Elliott, & Wilson, and the Chicago and Rock Island Railroad Company, and the trustees of the other trust-mortgage, to wit, Edward W. Dunham, Thomas E. Walker, and Franklin Haven, were brought in as party defendants, and at the May term, 1866, of this court, such proceedings were had that, by consent of the trustees in all the mortgages, the cause was referred to Thomas F Withrow, as special master, who reported at that term the amount claimed to be due under each deed of trust or mortgage, which report was assented to, and a decree made by consent for the sale of the property by said master under each mortgage, which sale, after due notice, took place at Davenport, on the 9th day of July, 1866.

In the meantime the Chicago and Rock Island Railroad Company had caused to be incorporated, in the State of Iowa, the new company, which it had proposed to receive the title to the property

12 when the committee, Stanton and others, should obtain a perfect title by foreclosure of all the mortgages, called the Chicago, Rock Island and Pacific Railroad Company, which, when incorporated in

Iowa, was composed of Ebenezer Cook, John F. Tracy, David Dows, Thomas F. Sturges, and Oliver Charlick, all of them directors or officers of the Chicago and Rock Island Railroad Company, of Illinois, and which, in August, 1866, became consolidated with the Iowa company under the same name.

On the 3d day of July, 1866, Ebenezer Cook, John F. Tracy, David Dows, Thomas F. Sturges, agreed for and on behalf of the Chicago, Rock Island and Pacific Railroad Company, that said company should purchase the property of the Mississippi & Missouri Railroad Company, if it could be purchased for a sum not exceeding five millions of dollars at the sale under a decree of foreclosure in the United States circuit court for the district of Iowa, and hold it, after the purchase, in
13 trust, to carry out in good faith certain articles of agreement made by the Mississippi and Missouri Railroad Company, dated 1st November, 1865, and particularly that the parties of the second part, Stanton, Elliott, and Wilson, should receive five and a half millions of dollars in the bonds of the Chicago, Rock Island and Pacific Railroad Company referred to in said articles.

And, in consideration of this guarantee, the said Stanton, Elliott, and Wilson agreed not to bid at the said foreclosure sail of the Mississippi and Missouri Railroad Company.

This agreement was ratified and approved by the Chicago, Rock Island and Pacific Railroad Company, on the same day, in consideration that Stanton, Elliott, and Wilson, committee as aforesaid, would not bid at the said sale.

And, on the 9th day of July, 1866, and before the said sale took place, the said Stanton, Elliott, and Wilson, committee or trustees for the assenting stock and bond holders, ratified this agreement of 3rd of
14 July, and agreed to pay to the trustees in the several mortgages, the amount of the bid which the Chicago, Rock Island and Pacific Railroad Company might make at said sale.

And in pursuance of said agreement when the sale took place, on the 11th of July, 1866, the said Chicago, Rock Island and Pacific Railroad Company bid for and purchased the whole property of the Miss'ippi and Missouri Railroad Company, in Iowa, for the following sums:

The first division and machinery, from Davenport to Iowa City, for one million of dollars, under the first and second mortgages; the Oskaloosa division for three hundred thousand dollars, under the third mortgage, and the division from Iowa City to Council Bluffs, including the lands granted by the United States, for eight hundred thousand dollars; and thus, having purchased all the property under the prior mortgages, no sale or bid was made under the last or second construction mortgage, and said commitee did not bid at said sale.

15 The Chicago and Rock Railroad Company was consolidated with the Chicago, Rock Island and Pacific Railroad Company of Iowa; the bonds for five and a half millions, purchase of 1st of November, 1865, were executed and delivered to the trustees, Stanton, Elliott, and Wilson, or their agents, and, on the first of August, 1866, the said Chicago, Rock Island and Pacific Railroad Company procured for themselves, by a written paper, the appointment of agent of said trustees, and agreed to deliver to the stock and bond holders of the Mississippi and Missouri Railroad Company, their respective scaled shares of said five and a half millions of dollars, and to pay to the bondholders in the foreclosure suit, all that they were entitled to receive under the said foreclosure decree.

The said Chicago, Rock Island and Pacific Railroad Company also pro-

cured from the trustees in the four mortgages under which the property was sold, the agency of said trustees, and agreed with them to pay to the holders of bonds their distributive share of the proceeds.

16 And the said Chicago, Rock Island and Pacific Railroad Company has paid to all the assenting bondholders their share of the five and a half millions of dollars, and has delivered over to a receiver appointed by this court, the assenting stockholders' share of the said five and a half millions agreed to be paid to them under said scale of 20th October, 1865.

And all of the bondholders of the various classes of bonds have assented to the said sale of 20th October, and 1st November, 1865, and received their pro-rata share, except about one hundred and eighty-five thousand dollars, of which one bond of a thousand dollars is in the second mortgage of the first division, twenty to thirty thousand dollars on the Oskaloosa division, and the balance of said one hundred and eighty-five thousand were on the first and second land-grant construction mortgages.

And all of the stockholders have assented to said sale except the holders of about six thousand shares.

17 The said Chicago, Rock Island and Pacific Railroad Company also made an agreement with the said Stanton, Elliott, and Wilson, on the 27th day of December, 1866, to indemnify them against the claims of the non-assenting bondholders.

The plaintiff refers to the whole record of the suit of Durant and others vs. The Miss. Co., now in this court, in which the property was sold; he refers to the case of Howard et al., vs. The City of Davenport, and others, in which copies of the proceedings of the meeting of 20th October, 1865, and the contract of sale of 1st November, are set out in full; and the sixteen per cent. to be divided among the stockholders, decreed to go to holders of certain bonds guaranteed by the Mississippi & Missouri Company, and to copies of the contracts of 3d & 9th of July, 1866, of the 1st of August, 1866, and the 27th of December, 1866, which they make part of this bill.

And the said José Ribon and José Munoz bring this suit as well for themselves as all other non-assenting bondholders who are alike situated, and who may become coplaintiffs and bear their share of the costs of this suit.

18 And the said Ribon and Munoz say that they are the owners and holders of first construction mortgage bonds, bonds Nos. 10 & 11, for $1,000 00, and interest since November, 1864, and income bond on the same; No. 88½ for $500 00, and interest since 1st May, 1865, which latter bond they have lost; also No. 10 is lost. They are also the owners of second construction mortgage bonds Nos. 452, 453, 454, 455, 456, 457 for one thousand dollars each, and interest on them since January 1st, 1865, of which No. 452 is lost; and second construction mortgage bonds Nos. 881, 731, 732, 733, 734, 735, 736 for $500 each and interest on since January 1st, 1865, making $10,000 second construction mortgage bonds and interest, and $2,500 first construction mortgage bonds and interest; and that neither the said plaintiffs, nor any persons owners of them since 20th October, 1865, have assented to the said terms and contract of sale.

Copies of bonds and coupons are hereto annexed.

19 And the said Ribon and Munoz say that they are the owners and holders of 254 shares of stock in the *the* said property resold for their benefit.

And the said plaintiffs further aver that the said Chicago, Rock

Island, and Pacific Railroad Company, in the fall of 1866, after they became the agents of said Stanton, Elliott, & Wilson, purchased about seventy-five thousand dollars of the bonds of said Mississippi and Missouri Railroad Company at the scale price, and by such purchase, while acting as the agents of said trustees, and pay in the scale price, extinguished and cancelled the same. The only outstanding bonds of said Mississippi and Missouri Railroad Company, of which the plaintiffs have any information, are three owned by Horace Taylor, of New York; ten owned by Henry Granniss, of New York; six or seven owned by Bardwell, of Massachusetts; one by Henry S. McComb, of Delaware, and ten by Frederick Foster, of New York, all of which are being litigated against the Mississippi and Missouri, and Chicago, Rock Island and Pacific Railroad Companies, and others, by suits
20 said Mississippi and Missouri Railroad Company, which has never assented to the terms of said sale.

And the said Richard Clark says that he is the holder and owner of three hundred shares of stock in said Mississippi and Missouri Railroad Company, which has never assented to the said terms of sale.

And the said William Sohier says that he is the owner and holder of four hundred shares in the stock of said Mississippi and Missouri Railroad Company, which has never assented to the terms of sale.

And said Sylvester Marsh says he is the owner of $21\frac{51}{100}$ shares of non-assenting stock.

And the said plaintiffs, shareholders, for themselves and such other shareholders as never assented to the terms of said sale, who will become parties to this suit, and pay their share of the costs, file this bill in connection with said non-assenting bondholders, plaintiffs, to set aside the sale of said Mississippi & Missouri Railroad, its franchises and property, under the said foreclosure decree, and to have
21 pending in this court.

The stockholders, plaintiffs, hereto annex copies of their certificates of stock transferred or endorsed in blank.

They further aver that, since the sale of 1st of November, 1865, the Mississippi and Missouri Railroad has ceased to do any business. Its board of directors have met but once, and then only to remove an officer and appoint an attorney.

The directors of said company neglect and refuse to apply to the court to set aside the sale under said foreclosure, which sale was confirmed by this court in October, 1866.

And these plaintiffs all aver that they never knew or heard of the agreements of 1st and 9th of July, 1st and 10th of August, and 27th of December, 1866, until about the time of bringing this suit.

And the said Ribon and Munoz, holders of said bonds, and said Munoz, Clark, Sohier, and Marsh, holders of said stock of said Mis-
22 sissippi and Missouri Railroad bring this suit against said Chicago, Rock Island and Pacific Railroad Company and said Mississippi and Missouri Railroad Company for the purpose of setting aside the sale under said foreclosure, on the 9th of July, 1866. And they aver that all the trustees in said foreclosure suits, and said Stanton, Elliott, and Wilson, committee or trustees of the stock and bond holders who assented to said sale, are citizens of New York or some other State, and not of Iowa, and have no interest whatever in the said decree or the results of said sale or said foreclosure; that the only persons interested therein are the plaintiffs and others like them, holding non-assenting bonds and stock, and the said Chicago, Rock Island and Pacific Railroad Company, the purchasers at said foreclosure sale and said private sale.

And the plaintiffs aver that said sale on said 9th of July, 1865, under said foreclosure decree, is utterly null and void, and fraudulent in law, by reason of said agreement of said Chicago, Rock Island and Pacific Railroad Company and said Stanton, Elliott, and Wilson, trustees
23 or agents of the assenting bondholders, that the former would purchas' the property at any price they could set, exceeding five millions of dollars, and the latter, in consideration thereof, agreeing not to bid at said sale, and as against the non-assenting stock and bond holders, in view of the agreement to foreclosure already referred.

The plaintiffs say that road, machinery, real and personal property, land franchises, is now worth not less than twelve millions of dollars.

They said that Thomas F. Withrow, who, as master, sold said property, was then, and is now, an attorney of said Chicago, Rock Island and Pacific Railroad Company, and although perfectly competent and qualified in every other respect, is not a proper person to act as master on the resale of said property.

Your petitioners aver that the said Chicago, Rock Island and Pacific Railroad Company, by reason of said fraudulent purchase, are entitled to no benefits arising from said sale, and are liable to the plaintiffs for the entire amount received from the sale of said road, and
24 machinery and the sale of any of said lands, some of which have been sold, and said lands not sold, all of which are worth an average of ten dollars per acre.

Your petitioners pray for a writ of subpœna against the said Chicago, Rock Island and Pacific Railroad Company and said Mississippi and Missouri Railroad Company, to be and appear before this court on a day therein named, an' answer all the allegations of this bill as if proposed by special interrogatories.

That the said sale, under said foreclosure decree of 9th of July, 1866, confirmed at the October term, 1866, of this court be set aside, annulled, and declared fraudulent & void; that said Chicago, Rock Island and Pacific Railroad Company may be decreed to account for the gross increase of said railroad from the day of purchase to this time; that they may render an account of any land sold, and the price thereof; that a master may be appointed to take said account, and to resell said property of every kind and description sold under said decree;
25 that the money from said accounting and said sale be applied, first, to the payment of said non-assenting bonds of plaintiffs and others who come in, and the residue applied to the plaintiffs, holders of said non-assenting stock and others who may come in as parties plaintiff, and for such other and further relief as the nature of the case may require.

GRANT AND SMITH,
For the Plaintiffs.

Whereas the Chicago, Rock Island and Pacific Railroad Company, on the ninth day of July, in the year eighteen hundred and sixty-six, purchased the property of the Mississippi and Missouri Railroad Company, in pursuance of an agreement made by the said Chicago, Rock Island and Pacific Railroad Company with Messrs. Stanton, Wilson, and Elliott, committee, dated the third day of July, in the year eighteen hundred and sixty-six; and whereas the duties of the said committee, as created and defined by an agreement made by the said com-
26 mittee with P. M. Myers and other holders of stock and bonds of the Mississippi and Missouri Railroad Company, required them to distribute among such subscribing holders of stock and bonds certain

new bonds, bearing a fixed ratio to the surrendered bonds and stock of the Mississippi and Missouri Railroad Company, and to do sundry other things, as, by a reference to said agreement, will more fully appear:

Now this agreement made between the Chicago, Rock Island and Pacific Railroad Company of the first part, and George W. Stanton, jr., Blakely Wilson, and John Elliott, committee, of the second part, witnesseth:

That the party of the part, as agent of the parties of the second part, agree to distribute the new bonds, with interest from the first day of December, eighteen hundred and sixty-five, to the date of the bonds, and fulfill all the other obligations in the said agreement of the said committee, with P. M. Myers and others contained; it being understood that the distribution of the bonds shall be made within the time
27 and subject to the penalty of the agreement of July 3d between the same parties, and that the interest shall be distributed at the same time, or whenever, in the opinion of John F. Tracy, Joseph E. Sheffield, and W'm Walter Phelps, or any two of them, such distribution can be made without risk to the right of the party of the first part hereinafter conceded, to use the same, or that part of the same, to defend themselves against any suits or liabilities incurred by them under this agreement which shall be necessary or proper.

But it is also understood that, in the event of a delay in such distribution of interest of more than six month' from the date of these presents, the party of the first part shall pay interest upon said interest at the rate of seven per cent. per annum thereafter; and also, that the party of the first part will pay all the cost and expense of the purchase and sale of the property of the Mississippi and Missouri Railroad Company, give to the plaintiffs in said suit of foreclosure all that they shall
28 be respectively entitled to, and to the party of the second party twenty-one bonds of one thousand dollars each, of the kind and description mentioned in an agreement of the Mississippi and Missouri Railroad Company, dated the first day of November, eighteen hundred and sixty five, as a proper compensation for their several services as said committee.

And finally that the party of the first part will hold harmless and protect the said party of the second part, and each of them, from any liability, claim, demand, or suit arising from any matters contained in said agreement with P. M. Myers and others. And the parties of the second part, in consideration of the covenants aforesaid, agree—

First. To give to the party of the first part the bonds of the Mississippi and Missouri Railroad Company, now on diposit in the Union Trust Company of New York.

29 Second. To authorize the party of the first part to use their name in any way necissary and proper to enable the party of the first part to close up the trust created by said agreement with P. M. Myers, and to draw upon the sum reserved as interest for the discharge of any payment, costs, expenses, or any other outlay incurred in settling the said trusts, if such payments, costs, expenses, and outlays, shall exceed the value of five million five hundred thousand dollars in bonds of the contemplated issue, and not otherwise.

It being the general scope and understanding of this agreement that The Chicago, Rock Island and Pacific Railroad Company having by this agreement assumed all the liabilities and obligations of Messrs. Stanton, Wilson, and Elliott, committee, the said company shall have also all the rights and privileges of the committee into whose place the said company steps; and it being also understood that nothing herein contained

is intended to give to the party of the first part, any right, sanc-
30 tion or color of right, to delay under any circumstances the payment of coupons or interest-warrants on the bonds of the new issue to be distributed among the holders of bonds or stock of the Mississippi and Missouri Railroad Company as provided by all previous agreements hereinbefore mentioned.

In witness whereof the said parties have hereunto signed their names—the said Chicago, Rock Island and Pacific Railroad Company, by its president, thereunto lawfully authorized by a resolution of the executive committee of said company, and the other parties hereto by themselves personally, this 1st day of August, 1866.

(Signed) CHICAGO, ROCK ISLAND & PACIFIC R. R. Co.,
By JOHN F. TRACY, *President.*
(Signed) G. W. STANTON, JR.
(Signed) JOHN ELLIOTT.
(Signed) B. WILSON.

Whereas the Chicago, Rock Island and Pacific Railroad Company have agreed to purchase the property of the Mississippi and Missouri
31 Railroad Company at the sale under the decree of the foreclosure, and have agreed to pay Stanton, Elliott, and Wilson, committee, $5,500,000 in bonds, as fully set forth in agreement between said company and said Stanton, &c., dated February 3d, 1866: Now we hereby declare the intent and meaning of said agreement to be, that we, the said Stanton, &c., committee, are to pay to the plaintiff, the trustees in the several mortgages, the amount of the bid that the Chicago, Rock Island and Pacific Railroad Company may make at said sale, and for such payment to the trustees so to be made by , or are to receive from said company the said sum of $5,500,000 in manner and form as set forth in said agreement of July 3d, 1866.

Witnesss our hands at Davenport, Iowa, July 9th, 1866.

(Signed) G. W. STANTON, JR.
(Signed) B. WILSON.
(Signed) JOHN ELLIOTT.

Agreement between Ebenezer Cook, John F. Tracy, David Dows, Thomas F. Sturges, and Oliver Charlick, of the first part, and
32 George W. Stanton, j'r, John Elliott, and Blakely Wilson, committee, of the second part.

The parties of the first part severally agree and undertake that the Chicago, Rock Island and Pacific Railroad Company shall purchase, if it can be purchased at a sum not exceeding five millions of dollars, the property of the Mississippi & Missouri Railroad Company, its various divisions, franchises, &c., at the sale under a decree of foreclosure of the United States circuit court for the district of Iowa, and shall hold it after such purchase, in trust, to carry out in good faith certain articles of agreement made by the said Mississippi and Missouri Railroad Company with the Chicago, Rock Island and Pacific Railroad Company, dated November 1st, A. D. 1865. And particularly that the said parties of the second part, as provided in the last-mentioned agreement, shall receive five millions five hundred thousand dollars in bonds, either of the said Chicago, Rock Island and Pacific Rail-
road Company, whose payment shall be guaranteed and assured
33 by the Chicago and Rock Island Railroad Company in some form or way that shall legally bind the said Chicago and Rock Island

Railroad Company or in bonds of a railway company which shall be formed by the consolidation of the said Chicago and Rock Island Railroad Company with the Chicago, Rock Island and Pacific Railroad Company.

And further do the parties of the first part guarantee, promise, and agree to and with the parties of the second part that if, and at the expiration of three months from the 9th day of July, 1866, the said parties of the second part have not received, whether from legal delay, impos'ibility, or other cause, bonds of the par value of five and a half millions of dollars of a kind and description above alluded to and fully mentioned and described in the agreement between the Mississippi and Missouri Railroad Company and the Chicago, Rock Island and Pacific Railroad Company as aforesaid, and then the said Chicago, Rock Island
Railroad Company shall, at its own expense, convey to the said
34 parties of the said part all the property and franchises of the
Mississippi and Missouri Railroad Company as conveyed to the said Chicago, Rock Island and Pacific Railroad Company by the deed of the master at the sale of foreclosure aforesaid.

The consideration of this guarantee is that the said parties of the second part agree, at the request of the parties of the first part, not to bid at the said foreclosure sale of the Mississippi and Missouri Railroad Company.

In witness whereof all parties have hereunto put their hands the 3d day of July, 1866, in the city of New York.

(Signed) EBENEZER COOK.
(Signed) JOHN F. TRACY.
(Signed) DAVID DOWS.
(Signed) THOMAS F. STURGES.

In consideration of one dollar and the agreement of Messrs. Stanton, Elliott, and Wilson, committee, not to bid at the sale of the Mississippi
& Missouri Railroad Company, as mentioned in the above agree-
35 ment, the Chicago, Rock Island and Pacific Railroad Company
therewith authorized by a vote of their board of directors, hereby promise and agree*d* with the said committee that they will buy in the Mississippi and Missouri Railroad if it can be purchased for five millions of dollars; that they will hold the said Mississippi and Missouri Road in trust to carry out a certain agreement made by the Mississippi and Missouri Railroad Company with Chicago and Rock Island Railroad Company, dated November 1st, 1865; that they will give the committee $5,500,000 in the first-mortgage bonds, bonds either of the Chicago, Rock Island and Pacific Railroad Company or of a new company made by the consolidation of the said Chicago, Rock Island and Pacific Railroad Company with the Chicago and Rock Island Railroad Company; and fin'lly that, if the said Chicago, Rock Island and Pacific Railroad Company have not, by the 9th day of Oct., 1866, given
to the said committee $5,500,000 of bonds of a kind and descrip-
36 tion above mentioned, they will convey to said Mississippi
and Missouri Railroad, its divisions, and all its property, just as deeded to them, to the said committee at the expense of the Chicago, Rock Island and Pacific Company.

Witness the signature of the president of the Chicago, Rock Island & Pacific Railroad Company this 3d day of July, 1866.

{ SEAL OF THE COMPANY. } (Signed) JOHN F. TRACY,
President of the C., R. I. & P. R. R. Co.

Copy of notice that agency was terminated.

NEW YORK, *March* 8, 1869.

To the Chicago, Rock Island and Pacific Railroad Company:

GENTLEMEN: The recent decision of the Supreme Court of the United States in the case of Mark Howard et al. vs. The City of Davenport and others, renders it necesssary for you to act as our agents in distributing the 16 per cent. to the stockholders of the Mississippi
37 and Missouri Railroad Company under the contract for the sale of said railroad.

The agency is hereby revoked.

J. ELLIOTT.
B. WILSON.

To the Chicago, Rock Island and Pacific Railroad Company:

Some time since you were notified by us, that your agency for the trustees or committee of the Mississippi & Missouri Railroad Company, it' stock and bond holders, was recalled.

Since that time you have made us no tender of a settlement of your account, and have retained a book belonging to us, as such trustees, from which we could make up our account. We desire a settlement with you at once.

J. ELLIOTT,
B. WILSON,
G. W. STANTON,
Trustees.
By GRANT & SMITH,
Their Attorneys.

DAVENPORT, *July* 23, 1869.

38 (Copy.)

Agreement of Chicago, R. I. & P. R. R. Co., to indemnify trustees as to non-assenting stockholders, 27 Dec., 1866.

Whereas certain articles of agreement were made by the Chicago, Rock Island & Pacific R. R. Co. with George W. Stanton, jr., John Elliott, and Blakeley Wilson, committee, dated Aug. 1st, 1866; and whereas the said committee at the request of the said C., R. I. and P. R. R. Co., are about to relinquish and cancel certain security which indemnified them against any liability whatever, as a com. of the stock and bond holders of the late Miss. & Mo. R. R. Co., this witnesseth:

That the said agreement aforesaid was intended to bond the C., R. I. & P. R. R. Co. to defend the said committee, any and each of them against any liability, expense, or damage sustained by them, each or any of them, incurred by virtue or re'son of or through any suit, demand, or claim brought or made against the said committee or any of them by any holder of stock or bonds in the late
39 Miss. & Mo. R. R. Company who did not assent to or sign a certain agreement made by and between P. M. Myers & others, & Stanton, Elliott, & Wilson, committee, dated Nov. 1st, 1865; and the said C., R. I. & P. R. R. Co. hereby agree to pay all costs & expenses incurred in the defense of such suits, if any such shall be brought, and to pay and satisfy the judgments, if any shall be obtained.

In witness whereof the C., R. I. &. P. R. R. Co. have caused these

presents to be signed by its secretary and president, this 27th day of Dec., 1866.

(Signed) JOHN F. TRACY,
President Chicago, Rock I'd & P. R. R. Co.

(Copy.) F. H. TOWS,
Sec'ty C., R. I. & P. R. R. Co.

Copy of second mortgage construction bonds.

UNITED STATES OF AMERICA, *State of Iowa:*

Mississippi & Missouri Railroad Company. Second mortgage construction bond.

No. 856.] [$500.

The Mississippi & Missouri Railroad Company acknowledge themselves to owe to C. W. Durant or bearer, five hundred dollars,
40 which sum said company promise to pay to the said C. W. Durant or to the holder hereof, at their office in the city of New York, on the first day of January, 1882, and also interest thereon, at the rate of seven per cent per annum, semi-annually, on the first day of January & July, the date hereof, until the said principal sum shall be paid, on the presentation of the annexed interest-warrants at the office of the company in the city of New York.

The payment of this bond is secured by a deed of trust or mortgage upon the railroad of the company and upon the lands granted to and in its construction as specified in said deed of trust or mortgage, and in annexed certificate of trustees.

In testamony whereof the said company have hereunto caused to be affixed their corporeal seal and these presents to be subscribed by their president & secretary, this tenth day of December, 1861.

[SEAL.] (Signed) CHA'S TUTTLE,
V. President.
H. PRIOR, *Sec'ty.*

41 The undersigned, trustees, do hereby certify that the Mississippi & Missouri Railroad Company have executed to us a deed of trust or mortgage, subject to the mortgages already existing upon different divisions of said road, purporting to convey their road and equipments, and all appurtenances thereto, from the city of Davenport to the city of Council Bluffs, and to Washington, in the State of Iowa; and also, all the right, title, and interest which the said company now have, or shall hereafter acquire, in and to all public lands of the United States granted by act of Congress, approved May 15, 1856, to the State of Iowa, and by the general assembly of the State of Iowa, by act approved Jan'y 14, 1856, granted to the Mississippi & Missouri Railroad Company, as specified in the said instrument in trust for the benefit of the holders of this bond of similar tenor as the foregoing, except that part of the same are for $500 each, and part for $1,000 each, issued and to be issued to an amount not exceeding in all seven hundred thousand dollars, and power to take possession of said railroad, its equipments and appurtenances, and sell or use the same, or any part thereof,
42 in case of a default in paying the interest or principal of said bonds, as in manner provided for in said deed of trust, or any of them, and with power to sell the lands so conveyed, and apply the proceeds to the payment of said bonds, and that the foregoing is one of the

several bonds described in & secured by said deed of trust, and that we have caused the said deed of trust to be recorded in the several counties through which the said road passes, and in which said lands are situated.

(Signed) JACOB S. WETMORE,
Trustee.

And all the other 2d mortgage construction bonds referred to in bill are identical with the above copy, except in Nos. , which are as stated in the bill.

Copy of coupon annexed thereto.

The Mississippi & Missouri Railroad Company will pay the bearer at their office in the city of New York, on the first day of July, 1865, seventeen $\frac{50}{100}$ dollars for interest due that day on their bond No. 856, $17 50.

H. PRIOR, *Sec't'y.*

43 And all the other coupons are identical with above copy except in dates, when due, & Nos. of bonds, which are as stated in the bill.

Copy of income bond.

Mississippi & Missouri Railroad Company.

STATE OF IOWA. UNITED STATES OF AMERICA.

No. 88½.] INCOME BOND. [$500.

Be it known that the Mississippi and Missouri Railroad Company owe to or bearer, the sum of five hundred dollars, which sum the said company are obligated to pay, on the eighth day of May, 1871, with interest on said sum of five hundred dollars, at the rate of seven per cent. yearly, payable semi-annually, at the office of the company, in the city of New York, on the eighth day of May and November in each year, and the faith of the company is hereby pledged for the annual payment of the interest, and the ultimate redemption of the principal. This bond is issued for coupons of the first mortgage construction bonds, which coupons are held by H. C. Cram, trustee, in accordance with an agreement between the holders of said bonds and this company, bearing date Oct. 1st, 1862.

44 In testimony whereof the said company have hereunto caused to be affixed their corporeal seal, and these presents to be subscribed by their treasurer and secretary, the eighth day of May, 1863.

[SEAL.] (Signed) GEO. T. M. DAVIDS.

J. S. BAKER, *Ass't Secretary.*

[20-cts. U. S. rev. stamp cancelled.]

Copy of coupon annexed thereto.

The Mississippi and Missouri Railroad Company will pay the bearer seventeen $\frac{50}{100}$ dollars, on the eighth day of May, 1865, at their office, in the city of New York, due that day, on their bond No. 88½.

$17 50.]

(Signed) J. S. BAKER,
Ass't Secretary.

(Written across the face:) Income.

And all the other said income bonds and coupons are identical with above copies, except in Nos. & dates when due, which are as hereinafter stated.

Copy of certificate of stock.

45 MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

No. 1319.] [100 shares.

State of Iowa. This certifies that Richard H. Clark is entitled to one hundred (100) shares, of one hundred dollars each, in the Mississippi & Missouri Railroad Company, transferable in person or by attorney on the books of the company, at the office of the treasurer, in the city of New York, or at any transfer agency established by the company, only on the surrender of this certificate.

In witness whereof the said Co. have caused this certificate to be signed by the president and treasurer, dated at the Transfer Office, in the city of New York, this 30th day of August, 1865.

(Signed) JOHN *E.* DIX,
President.

GEO. T. M. DAVIS, *Treasurer.*

[U. S. rev. st'p, 25 cts., cancelled.]

MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

No. 695.] [100 shares.

State of Iowa. This certifies that W'm Searles is entitled to 100 shares (one hundred) of one hundred dollars each in the Mississippi and Missouri Railroad Company, transferable in person or by attorney on
46 the books of the company, at the office of the treasurer, in the city of New York, or at any transfer agency established by the company, only on the surrender of this certificate.

In witness whereof the said co. have caused this certificate to be signed by their treasurer & president, dated at the transfer office, in the city of New York, this 16th day of May, 1863.

(Signed) CHA'S TUTTLE,
Vice-President.

GEO. T. M. DAVIS, *Treasurer.*

(Endorsed thereon:)

For value received, the undersigned hereby assign and transfer unto Dennis W. Quirk shares of the capital stock of the Mississippi and Missouri Railroad Company, and do hereby constitute and appoint true & lawful attorney, irrevocably, for and in room and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations & by-laws of said company.

In witness whereof we have hereunto set our hands & seal this 10th day of March, 1864.

(Signed) LATHROP & MOTT.

Sealed & delivered in presence of—
(Signed) GEO. H. HUGHS.

47 *Copy of assignment attached to said certificates Nos. 695 & 1074.*

Know all men by these presents that I, Dennis W. Quirk, for value received, have bargained and sold, assigned and transferred, and by these presents do bargain, sell, transfer, and assign unto
two hundred shares of the capital stock of the Mississippi & Missouri R. R. Company standing in my name on the books of the company:
No. 695, one hundred shares.
" 1074, " " "
and do hereby constitute and appoint my true and lawful attorney, irrevocably, for and in my name & stead to use, to sell, assign, transfer, and set over all or any part of the said stock, and for that purpose to make and execute all necessary act of assignment and transfer, and one or more persons to substitute, with like full powers, hereby satisfying and confirming all that said attorney or substitute shall lawfully do by virtue hereof.

In witness whereof I have hereunto set my hand & seal the 1st day of Feb., one thousand eight hundred & seventy.

48 DENNIS W. QUIRK.

Sealed & delivered in presence of—
E. W. WARD.

[25-cts. U. S. rev. st'p, cancelled.]

(Copy.)

MISSISSIPPI & MISSOURI RAILROAD COMPANY.

No. 1297.] [100 shares.

State of Iowa.

This certifies that W'm Sohier is entitled to one hundred (100) shares of one hundred dollars each in the Mississippi and Missouri Railroad Company, transferable in person or by attorney on the books of the company at the office of the treasurer in the city of New York, or at any transfer agency established by the company, only on the surrender of this certificate.

In witness whereof the said company have caused this certificate to be signed by the president and treasurer at the transfer office, in the city of New York, this 31st day of March, 1865.

(Signed) JOHN A. DIX,
President.

GEO. T. M. DAVIS, *Treasurer.*

[25-c't rev. st'p, U. S., cancelled.]

Also, certificates Nos. 1300, 1299, 1298, are identical with above copy except in Nos.

49 (Copy.)

STATE OF IOWA:

MISSISSIPPI & MISSOURI RAILROAD.

No. 45.] [18 shares.

This certifies that Sylvester Marsh is entitled to eighteen shares of

one hundred dollars each, in the Mississippi & Missouri Railroad Company, transferable in person or by attorney on the books of the company, at the office of the treasurer, in the city of New York, or at any transfer agency established by the company, only on the surrender of this certificate. Interest at the rate of ten per cent per annum will be allowed on all full-paid stock until July, 1866, payable in the stock of the company.

In witness whereof the said company have caused this certificate to be signed by their treasurer and president, dated at the transfer office in the city of New York, this second day of April, 1855.

(Signed.) JOHN A. DIX, *President.*

A. C. FLAGG, *Treasurer.*

Shares of 100 dollars each.

50 (Copy.)

MISSISSIPPI & MISSOURI RAILROAD COMPANY.

No. 49.] *Scrip certificate of interest.* [$347 50.

This is to certify that Sylvester Marsh is entitled to *to* three hundred forty-seven $\frac{50}{100}$ dollars for interest due on 18 shares full-paid stock. The amount of this scrip certificate is convertable into stock of the company at par whenever a sum equal to one or more shares is presented at any transfer office of the company.

In testimony whereof the secretary of said company has hereunto subscribed his name this first day of July, 1856.

(Signed) H. PRIOR, *Secretary.*

All the other shares & scrips are like this except Nos. & names of payees or assignees.

(Endorsed:) Ribon, Munoz & others vs. Chicago, Rock Island & Pacific Railroad Co., & others. Bill in equity. Filed Sept. 17, 1870. George B. Corkhill, clerk.

51 And on the same day, to wit, the 17th day of September, A. D. 1870, the said plaintiffs, by their attorneys, filed in said clerk's office their præcipie for subpœna, which said præcipie is in words and figures following, to wit:

52 *Præcipe.*

In circuit court of United States for the district of Iowa, October term, A. D. 1870.

JOSÉ RIBON, A CITIZEN OF THE STATE OF NEW York, & others,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC Railroad Company, & others, citizens of the State of Iowa.

The clerk will issue subpœna, directed to the marshal of said district, returnable to the next term of said court, in accordance with the prayer of said bill in equity.

GRANT & SMITH,
Plaintiffs' Attorneys.

SEPTEMBER 15, 1870.

(Endorsed:) Filed Sept. 17, 1870. George B. Corkhill, clerk.

53 And on same day, pl'ffs filed their bond for costs in said cause, which is in words & figures, following:

Security for costs.

In circuit court of United States for the district of Iowa. October term A. D. 1870.

JOSÉ RIBON AND OTHERS
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILroad Company and others.

I do hereby enter myself security for and acknowledge myself bound to pay all costs which may accrue in above-entitled cause, to the defendants, or any of the officers of this court, which the plaintiff may be adjudged to pay.

W. J. BISHAND.

SEPTEMBER 15, 1870.

(Endorsed:) Filed Sept. 17, 1870. George B. Corkhill, clerk.

54 And on the same day, to wit, the 17th day of September, A. D. 1870, there issued out of said clerk's office, a subpœna in chancery, directed to said defendants, and in words and figures, following to wit:

55 *Subpœna in chancery.*

UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to Chicago, Rock Island & Pacific Railroad Company, and others, and the Mississippi & Missouri Railroad Company:

We command you, and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the November rule-day, it being the 7th day of November next, (A. D. 1870,) to answer to the bill of complaint to José Ribon, a citizen of the State of New York, and others, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Iowa: Returnable to the circuit court on November rule-day, it being the 7th day of November, A. D. 1870.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the U. S., at Des Moines, this 17th day of September, A. D. 1870, and of the independence the ninety-fifth year.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

MEMORANDUM.—The within-named defendants are notified that, unless they enter their appearance in the clerk's office of said court, at

Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

[L. S.] GEORGE B. CORKHILL, *Clerk.*

56 Endorsed as follows:

This writ came into my hands for service, on the 22d day of September, A. D. 1870, and I served the same on the within-named defendants by reading the same to Ebenezer Cook, vice president of the Chicago, Rock Island and Pacific Railroad, and to Hiram Price, sec'y of the Mississippi & Missouri Railroad, and by delivering a true copy to them, at Davenport, in the count' of Scott, & State of Iowa.

GEO. W. CLARK,
U. S. Marshal.
GUS. A. SCHURTZER, *Dep.*

Marshal's fees: Mil'age, 180 miles, $10 80; service on two, $4 00; two copies, $1 00—$15 80.

Filed Oct. 3d, 1870.

GEORGE B. CORKHILL, *Clerk.*

57 And on this day, to wit, the sixth day of December, in the October term, A. D. 1870, of said court, in the records of the proceeding thereof, in said entitled cause, there appears the following entry, to wit:

JOSÉ RIBON ET AL.
vs.
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD CO. } No. 231. Ch'y.

Now, on this day, this cause coming on for a hearing, the plaintiff appearing by Grant & Smith, and defendant by Withrow & Wright, the defendant files his demurrer herein, which is set down for hearing on the February rule-day.

58 And on this day, to wit, the 5th day of December, A. D. 1870, comes the defendant, The Chicago, Rock Island, and Pacific Railroad Company, by Thomas F. Withrow, its attorney, and files in said cause its demurrer to the petition, which said demurrer is in words and figures, following:

59 *Demurrer.*

In circuit court of United States, district of Iowa.

JOSÉ RIBON, JOSÉ MUNOZ, ET AL.
vs.
THE CHICAGO, ROCK ISLAND, AND PACIFIC RAILROAD COMPANY, et al.

Now comes The defendant, The Chicago, Rock Island & Pacific Railroad Company, and, by protestation, neither confessing nor admitting the said bill and the matters and things therein contained are true, says that the said bill and the said allegations thereof are wholly insufficient in law for said plaintiffs to have and obtain the relief in and by said bill demanded, and for cause of such demurrer here show' to the court:

1st. There is no equity in said bill.

2d. It appears in and by said bill that Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, E. W. Dunham, Thomas E. Walker, and Franklin Haven, trustees in the several mortgages mentioned, are necessary and indispensable parties to said bill.

60 3d. It appears in and by said bill that all the persons intended in the distribution of the fund now in the hands of the receiver, in the case of Howard et al. vs. The City of Davenport et al., are necessary and indispensable parties to said bill.

4th. There is no such case made in and by said bill as entitles the complainants to the relief therein prayed.

Wherefore the said Chicago, Rock Island and Pacific Railroad Company prays the judgment of the court whether it shall be required to make any other or further answer to said bill.

WITHROW & WRIGHT,
Att'ys for Def't.

I certify that, in my opinion, the foregoing demurrer is well founded in point of law.

THO'S F. WITHROW.

STATE OF IOWA, *Polk County, ss:*

61 Thomas F. Withrow, being duly sworn, states that he is one of the solicitors of the Chicago, Rock Island and Pacific Railroad Company, and as such, has control on the part of said company of the above-entitled cause, and that the foregoing demurrer is not interposed for delay, but that justice may be done.

THO'S F. WITHROW.

Subscribed and sworn to by the above-named Thomas F. Withrow in my presence, this second day of December, 1870.

{ W. O. CURTISS, IOWA, NOTARIAL SEAL. }

W. O. CURTISS,
Notary Public, Polk County, Iowa.

(Endorsed:) Filed Dec. 5, 1870. George B. Corkhill, clerk.

62 And on this day, to wit, the 26th day of January, A. D. 1871, there is filed in said clerk's office the following stipulation of parties, to wit:

Stipulation.

In U. S. C. c't, Des Moines.

JOSÉ RIBON, JOSÉ MUNOZ, & OTHERS
vs.
THE CHICAGO, ROCK ISLAND AND PACIFIC R. R. Co., & als. } No. 231. Ch'y.

It is hereby stipulated that the demurrer of defendant to complainants' bill herein, shall be submitted to Hon. Judge Love, at chambers, in Ottumwa, Iowa, on written briefs alone, on the 1st Monday in February, A. D. 1871. Grant & Smith to forward their brief to Withrow & Wright within 5 days from this date, & Withrow & Wright to furnish their

brief to Grant & Smith in time for them to respond thereto, and have same in Judge Love's hands by the date above stated, Jan. 23, '71.

GRANT & SMITH,
Comp'ts' Sol's.
WITHROW & WRIGHT.

(Endorsed:) Filed January 26, 1871. George B. Corkhill, clerk.

63 And on this day to wit, the 27th day of October, in the October term, A. D. 1870, of said court in the records of the proceedings thereof in said entitled cause appears the following entry, to wit:

JOSÉ RIBON ET AL.
vs.
CHICAGO, ROCK ISLAND & PACIFIC RAILroad Co. } No. 231. Ch'y.

The plaintiff, by Grant, moves the court to appoint a master to advertise for the parties for whose interest this suit is brought, and who are not named in the bill to come into court by a given day and appear as plaintiffs. And thereupon it is ordered by the court that C. H. Gatch be appointed a special master to ascertain and report to this court the names of non-assenting bond and stock holders, referred to in said bill, and that the said master examine and report to this court, whether, under the acts of Congress and the rules of equity practice adopted by
64 this court, a publication may be made of such bond and share holders who are non-residents to have counsel therein, and if necessary to report form of advertisement.

65 And on this day, to wit, the 8th day of April, A. D. 1871, comes C. H. Gatch, special master in said cause, duly appointed by the court, and files the following report, to wit:

Master's report.

Circuit court of the United States, district of Iowa.

JOSÉ RIBON & OTHERS
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC R. R. Co., et al.

The undersigned master, appointed in the above cause, begs leave to report: That it appears from the testimony in the case of Howard et al., vs. The Miss. & Mo. R. R. Co. et al., that the amounts of bonds which did not assent to the terms of said sale was at least one hundred and eighty-five thousand dollars, ($185,000.) Of this number, ten thousand owned by Fredner Foster; six or seven thousand owned by G. Bredwell; about 750 owned by J. C. McCollunn were introduced into said cause by intervention, and all allowed, except those held by Mc-
66 Collunn. It appears by the evidence in the same cause, that about 6,000 shares of stock did not assent; of these shares, besides those represented by the plaintiff, 2,000 shares, owned by the county of Mahaska, and 650 owned by the county of Pottawatamie, have been cancelled. Pottawatamie County owned 1,000 shares, and this leaves outstanding 350 in the name of that county, and I can find the names of no others than those of the plaintiff.

As to the power of this court to require the master to advertise, I find that the rules of practice adopted for this court by the supreme court in 1842, adopted the rules of practice of the high court of chancery in England, when not modified by the court. These rules were adopted in January, 1842, and I find a case in 19 Vesey, 336, decided in 1815, in which it is said that it is common practice for the master to advertise for persons who are parties in interest, but not known or named, to come in. This case, I think, settles the practice, and I
67 recommend to the court to have the pendency of the court advertised, that other parties, bond or stock holders, claiming in like degree with the plaintiffs, and for whom the suit is brought, as well as the plaintiffs, to come in by a fixed day or they will be barred.

I annex a form for such notice.

C. H. GATCH, *Master.*

Master's fee, $15 00.

Legal notice.

Pursuant to an order or decree of the circuit court of the United States for the district of Iowa, made in a case wherein José Ribon and others are plaintiffs, and the Chicago, Rock Island and Pacific Railroad Company, and Mississippi & Missouri Railroad Company are defendants, are bondholders & stockholders of said Mississippi & Missouri Railroad Company, a corporation created by the laws of Iowa, who did not assent to the terms of sale of the property & franchises of the Mississippi & Missouri Railroad Company to the Chicago & Rock Island
68 Railroad Company, of 1st November, A. D. 1865, are notified to come in and prove their claims before , master appointed in said cause, on or before the day of , A. D. 1871, at his office in the city of Des Moines, Iowa, or in default thereof they will be peremptorily excluded from the benefit of any decree in said cause made or to be made in favor of the plaintiffs.

, *Master.*

69 And on this day, to wit, the 18th day of May, in the May, A. D. 1871, term of said court in the records of the proceedings thereof in said entitled cause there appears the following entry, to wit:

JOSÉ RIBON, JOSÉ MUNOZ, RICHARD H. CLARK, Sylvester Marsh, W'm Sohier,
vs.
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILroad Company, and Mississippi & Missouri R. R. Co. } No. 231. Equity.

This cause came on now to be heard, Grant, for the plaintiffs, Withrow, for The Chicago, Rock Island and Pacific Railroad Company, and, on argument had on demurrer of said defendant, The Chicago, Rock Island and Pacific Railroad Company to the plaintiffs' bill, the said demurrer is sustained and the plaintiff abides by said demurrer, and, thereupon, it is ordered and decreed that said bill be dismissed with costs. And the plaintiff then and there prayed an appeal to the Supreme Court of the United States, which is allowed, on plaintiffs
70 giving bond, with surety in the penal sum of five hundred dollars, conditioned to prosecute his appeal and abide the orders of the Supreme Court, to be approved by the clerk of this court.

71 And on this day, to wit, the 18th day of May, A. D. 1871, comes the plaintiff, by his attorney, and files his appeal bond in said cause which said appeal bond is in words and figures following, to wit:

Know all men by these presents that we José Ribon, José Munoz, Richard H. Clark, Sylvester Marsh, and W'm Sohier, principals, and James Grant, surety, are held and firmly bound unto The Chicago, Rock Island and Pacific Railroad Company, in the penal sum of five hundred dollars, to which payment we bind ourselves and each of us.

The condition of this obligation is this, that whereas the said obligors have prayed an appeal from the decree of the circuit court of the United States for the district of Iowa, in a cause wherein said obligors, principals, are plaintiffs, and the said obligee & others are defendants:

Now if said principal, obligors, shall duly prosecute said appeal and abide by and perform the orders of said Supreme Court, this obligation to be void; otherwise to remain in full force.

(Signed) JOSÉ RIBON.
JOSÉ MUNOZ.
RICHARD H. CLARK.
72 SYLVESTER MARSH, &
W'M SOHIER,
By J. GRANT, *Attorn.*
JAMES GRANT.

(Endorsed:) Filed and approved this 18th day of May, 1871. George B. Corkhill, clerk.

73 And on this day, to wit, the 22nd day of June, A. D. 1871, there is filed in said cause, in said clerk's office, the following stipulation of parties:

Circuit court of the United States for the district of Iowa.

JOSÉ RIBON ET ALS.
vs.
THE CHICAGO, R. I. & P. R. R. CO. & OTHERS. } In equity.

It is agreed in this cause that the clerk need not copy the exhibit referred to as the Howard cause, in this court, but that the clerk of the Supreme Court in printing the record for that court shall cause the record in the two cases entitled John V. McCullunn & others vs. Mark Howard & others, Nos. 344 & 406, Dec'r term, 1869, to be printed as part of the record in this cause.

GRANT & SMITH,
For Pl'ff.
THO'S F. WITHROW,
For Def't.

(Endorsed:) Filed June 22nd, A. D. 1871. George B. Corkhill, clerk.

74 Circuit court of the United States, district of Iowa.

I, George B. Corkhill, clerk of said court for said district, do hereby

certify that the above and foregoing is a full, true, and complete copy of all the pleadings, exhibits, and records, entries in a certain cause in said court wherein José Ribon, José Munoz, Richard H. Clark, Sylvester Marsh, and W'm Sohier are plaintiffs, and The Chicago, Rock Island and Pacific Railroad Company and The Mississippi & Missouri Railroad Company are defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at my office in Des Moines, in said district, this 13th day of October, A. D. 1871.

[SEAL.]

GEORGE B. CORKHILL,
Clerk Cir. C't U. S., Dist. of Iowa.

(Indorsement on cover:) No. 359. José Ribon, José Munoz, Richard H. Clark, Sylvester Marsh, William Sohier, appellants, vs. The Chicago, Rock Island and Pacific Railroad Company and The Missisippi and Missouri Railroad Company. Iowa C. C. U. S. Filed 26th October, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 344 of 1869.

JOHN V. McCOLLUM, FREDERICK A. FOSTER, J. BARDWELL, AND H. S. McCOMB, APPELLANTS,

vs.

MARK HOWARD, JOHN WEBBER, JOSEPH YOUNG, CLARK DURANT, GEORGE BLISS, CHARLES W. DURANT, WILLIAM ELLIOTT, HENRY VANDERVEER, ROBERT MURRAY, BETSEY TRACY, HARRIET LE CONTE, MARGARET I. NISBET, JOSEPH W. CLARK, VOLKERT P. DOUW, CHRISTOPHER Y. LANSING, JARED F. HARRISON, THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, GEORGE W. STANTON, JR., JOHN ELLIOTT, AND BLAKELY WILSON, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

76 In the circuit court of the United States for the district of Iowa.

MARK HOWARD & JOHN WEBBER
ag't
THE CITY OF DAVENPORT, THE MISSISSIPPI and Missouri Railroad Company, The Chicago & Rock Island Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, & The Chicago, Rock Island and Pacific Railroad Company.

Be it remembered that, on the ninth day of July, A. D. 1866, on the application of James Grant, plaintiffs' solicitor, a writ of subpœna issued out of the office of the clerk of the circuit court of the United States for the district of Iowa against The City of Davenport, The Mississippi and Missouri Railroad Company, The Chicago and Rock Island Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Wilson, and The Chicago, Rock Island, & Pacific Railroad Company; which said writ, together with the return of the marshall thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to The City of Davenport, The Mississippi and Missouri Railroad Company, The Chicago and Rock Island Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Wilson, and The Chicago, Rock Island and Pacific Railroad Company, greeting:

We command you, and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday of August, A. D. 1866, it being the sixth day of August next, (A. D. 1866,) to answer to the bill of complaint of Mark Howard and John Webber, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa, returnable on the first Monday of August, A. D. 1866.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the U. S., at Des Moines, this the 9th day of July, A. D. 1866, and of the independence the year.

[SEAL OF COURT.] W. G WOODWARD, *Clerk.*

[50-cents U. S. rev., affixed & cancelled.

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk.*

Served the within subpœna on George W. Stanton, jr., Blakely Wilson, & John Elliott, personally, by delivering a copy thereof to each of them, at Davenport, Scott County, Iowa, on the 9th day of July,
77 A. D. 1866; also, served the same on The Chicago, Rock Island and Pacific Railroad Company, and on The Chicago & Rock Island Railroad Company, by delivering a copy thereof to John F. Tracy, president of each of said railroads, personally, at Davenport, Scott County, Iowa, on the ninth day of July, A. D. 1866; also, served the same on The Mississippi and Missouri Railroad Company, by delivering a copy hereof to Abel Kimball, superintendant of the said road, personally, at Davenport, Scott Co., Iowa, on the fourth day of August, A. D. 1866; and by delivering to Ebenezer Cook, secretary of said road, personally, a copy hereof, at Davenport, Scott County, Iowa, on the fourth day of August, A. D. 1866; also, served the same on The City of Davenport, by delivering a copy hereof to Jno. L. Davis, mayor of the said city, personally, on the thirty-first day of July, A. D. 1866, at Davenport, Scott County, Iowa.

PETER MELENDY, *Marshall,*
By JNO. M. LYTER, *Spec. Deputy.*

Serving	$2 25
Mileage	19 20
Copies	1 60
	$23 05

Fees paid.

JNO. M. LYTER.

Endorsed: Filed, , A. D. 186 .

On this day, to wit, the ninth day of July, A. D. 1866, came the said plaintiffs, by their solicitors, Grant & Smith, and filed in said clerk's office their bill in said entitled cause; which bill is in the words and figures following, to wit:

In the circuit court of the U. S. for the district of Iowa.

MARK HOWARD AND JOHN WEBBER *vs.* THE CITY OF DAVENPORT ET AL. } Bill in equity.

To the judges of the circuit court of the United States for the district of Iowa:

1. Mark Howard, who avers that he is a citizen of the State of Connecticut, and John Weber, who avers that he is a citizen of the State of New Jersey, bring this bill in equity against The City of Davenport, a municipal corporation created by, and a citizen of, the State of Iowa; The Mississippi and Missouri Railroad Company, a corporation for pecuniary profit, created by, and a citizen of, the State of Iowa; The Chicago and Rock Island Railroad Company, a corporation created by, and a citizen of, the State of Illinois; George W. Stanton, jr., John Elliott, and Blakely Wilson, citizens of the State of New York; and The Chicago, Rock Island and Pacific Railroad Company, a corporation for pecuniary profit, created by, and a citizen of, the State of Iowa.

2. And thereupon the said plaintiffs complain that, on the twentieth day of October, 1864, the said Mark Howard recovered, by due process of law, in this court, judgment against The City of Davenport, for the sum of $3,562 50 debt, & costs taxed at $48 21; and by like due process of law, a like judgment at the May term, 1866, as of the twentieth of October, 1864, for the same sum, debt & costs, against The
78 Mississippi and Missouri Railroad Company; that, on the twentieth October, 1865, and May term, 1866, as of October, 1865, said John Weber recovered a judgment against both of said defendants in this court, for the sum of $8,581 00 debt, and $28 90 costs; that said judgments were recovered & had for interest due on certain bonds, held by said plaintiffs respectively, which had been executed and delivered by the said City of Davenport to E. Cook, or bearer, and guaranteed by the Mississippi & Missouri Railroad Company; that, on the first of August, 1853, the said City of Davenport subscribed for seventy-five thousand dollars of the stock of the Mississippi and Missouri Railroad Company, which corporation, one of the defendants, was created to build a railroad from Davenport to the Missouri River, and to pay for said subscription, the said city, on the said first of August, 1853, executed and delivered its bonds to the amount of seventy-five thousand dollars, in sums of five hundred and one thousand dollars each, payable to Ebenezer Cook, or bearer, whereby the said city obligated itself to pay to the bearer of each of said bonds the principal debt therein named, with interest at the rate of ten per cent. per annum, payable half-yearly, on the first day of February and August in each year; and said bonds also contained a condition that the holders thereof might, at any time prior to the first of January, 1860, on the

surrender of the same, receive in lieu thereof an equal amount of stock in the said Mississippi and Missouri Railroad Company; the principal of said bonds was payable on the first day of August, 1865; and the said Mississippi and Missouri Railroad Company received said bonds in payment of said subscription, and by writing on the same, on the eighth September, agreed that, in consideration that the city had to A. C. Flagg, its treasurer, the stock held by said city in trust for the purpose above named, the said railroad company guaranteed to the holders of said bonds the payment of the principal and interest on said bonds, according to the tenor thereof. The said bonds were, after being so guaranteed, delivered by the said Mississippi and Missouri Railroad Company to purchasers, and said judgments were recovered against the city as makers, and the said railroad company as guarantors for unpaid interest. A copy of said bonds, guaranty, & interest-notes is hereto annexed, and the originals made part of this bill. The said bonds, guaranty, & interest-notes are all alike except in the numbers; some are for $500 and some for $1,000 each. That the said city of Davenport has, at the time of filing this bill, a population of sixteen thousand inhabitants; its assessed value of property for 1866, is three millions seven hundred and fifty thousand dollars, and its bond debt & interest, including the seventy-five thousand dollars herein set forth, is four hundred thousand dollars, and it has paid no interest on said debt since the year 1860. And said Mark Howard says that he is the holder of the following bonds of one thousand dollars each: Nos. 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 6, 7, 8, 9, and 10; and the followlng bonds of five hundred dollars each: Nos. 21, 22, 23, 24, 73, 74, 75, 82, 90, 95, 96, 97, 98, 99, 100, 101, 102, 107, and 108, making a total of principal debt twenty-four thousand five hundred dollars, and the unpaid interest not included in said judgments is about fourteen thousand dollars. And the said John Weber says he is the holder of bonds Nos. 13, 14, 15, 61, making of principal $4,000, and the unpaid interest thereon not included in said judgments is $3,500.

3. That executions have been issued on both of said judgments against each defendant therein, & returned "No property found,"
79 and both the city & the Mississippi and Missouri Railroad Company are insolvent, and have no visible property out of which said judgments can be made by execution. That said judgments, executions, and returns are part of the records of this court, and subject to its inspection.

4. That, prior to the date of either of said judgments, The Mississippi & Missouri Railroad Company had issued its bonds & mortgages, or trust deeds, to secure the same, at various times, to the amount of about seven millions of dollars, and at the date of said judgments said corporations had become insolvent & totally unable to pay its bond or guaranteed debt. That, in addition to said bond debt, it had become liable in divers guarantees of the bonds of cities and counties through which the road was built, to the amount of over three hundred thousand dollars, the payment of which had been repudiated by said cities and counties, and among said guaranteed bonds are those on which the plaintiffs have recovered their judgments, & those which they now hold.

5. That, on or about the eighteenth of October, 1865, at a meeting of the stock and bond holders of the Mississippi and Missouri Railroad Company, held in New York, in consequence of the inability of the company to pay its debts, a resolution was passed, requesting "the executive committee of said road to submit a report at the next meeting as to the advisability of selling the railroad." The said meeting was

adjourned to the twentieth of October, 1865, and the executive committee reported at the adjourned meeting that a sale of the road for five and a half millions of dollars to The Chicago and Rock Island Railroad was advisable, unless one and a half millions of dollars could be immediately raised by the bond and stock holders for the completion and equipment of the road to Des Moines. The executive committee, however, based their recommendation of the sale upon the condition that the distribution of five and one half millions of dollars is made according to the following scale:

1st mortgage bondholders,	in full		$1,256,490
2nd " "	80 per ct. on	400,000	320,000
Oskaloosa division,	62 " " "	664,935	416,212
Land-grant bonds,	70 " " "	3,878,550	2,714,635
Construction bonds,	30 per ct. on	693,764	208,120
Capital stock	16 " " "	3,452,500	552,400
Expenses foreclosing mortgages			32,130
			$5,500,000

The stock and bond holders at said meeting adopted a resolution, approving the sale on the basis proposed, and, on motion of Judge Emott, adopted the following resolution:

"*Resolved*, That a committee be appointed to arrange the mode and terms of payment with The Chicago and Rock Island Railroad Company, and the details of the sale authorized by this meeting; that Messrs. B. Wilson, G. W. Stanton, and John Elliott (defendants herein named) be appointed said committee, & that the committee be instructed to make arrangements with some trust company to receive the bonds and stock of the parties assenting, and issue certificates therefor, setting forth what the holder is entitled to receive."

At said meeting, a statement was made by John A. Dix, the president of the road, of the causes which had produced the insolvency of the road, and the necessity for a sale; a copy of the proceedings of said meeting is hereto annexed and made part of this bill.

80 The plaintiffs aver that this proposition to sell said railroad and its branches and property was accepted by The Chicago and Rock Island Railroad Company, and, on the first of November, 1865, a written "memorandum" of the understanding and agreement was made between The Mississippi and Missouri Railroad Company and The Chicago and Rock Island Railroad Company, in pursuance of certain resolutions passed by a meeting of the bond and stock holders of the Mississippi and Missouri Railroad Company, held in the city of New York, on the 20th October, 1865, & duly executed by both companies, whereby it was agreed that The Mississippi and Missouri Railroad Company would, with all possible dispatch, cause its mortgages to be foreclosed upon its entire line of railroad, lands, depots, equipments, &c., and its entire property, real and personal, to be sold, so that the purchaser shall be able to transfer to such incorporated company in Iowa as The Chicago and Rock Island Railroad Company might designate to become the purchaser thereof, under said proposal of the twentieth October; that the said Chicago and Rock Island Railroad Company should, within a year from the first day of December, 1865, cause to be incorporated, in the State of Iowa, a company which should purchase said property for the sum of five millions five hundred thousand dollars, and complete the road to Des

Moines. And the Mississippi and Missouri Railroad Company agreed that whoever purchased at the foreclosure should sell the property to the said company for this sum, on the terms above set forth. The Chicago and Rock Island Railroad Company were to procure proper legislative power to consolidate their company with the new Iowa company, and, when so consolidated, were to cause the consolidated company to issue its bonds to the amount of nine millions of dollars, payable in twenty-five years, at seven per cent. interest, to be disposed of as follows: To purchase the Mississippi and Missouri Railroad, as required by the proposal of twenty-first October, five and a half millions; the ballance to complete the road to Des Moines, and to pay off certain bonds of the Chicago and Rock Island Railroad Company, and certain bridge bonds not material to this cause. If the consolidation could not be affected, bonds were to be issued by the new Iowa company, and guaranteed by the Chicago and Rock Island Railroad Company, to pay for the above purchase of five and a half millions.

The Chicago and Rock Island Railroad Company was to have possession and operate the Mississippi and Missouri Railroad from first December, 1865, and to pay interest on said five and a half millions from that date, in cash, up to the time of the transfer to the new company. By another agreement, of even date, the possession & control of the Mississippi and Missouri Railroad and property was surrendered to The Chicago and Rock Island Railroad Company, as by copies of said agreements hereto annexed, will more fully appear.

The said mortgages of the Mississippi and Missouri Railroad Company were foreclosed in this court at the May term, 1866. The Chicago and Rock Island Company caused said new corporation to be created under the general incorporation laws of Iowa, called The Chicago, Rock Island and Pacific Railroad Company. The franchises and all the property of the Mississippi and Missouri Railroad Company were sold under said decree of foreclosure on the ninth of July, 1866; and said Chicago, Rock Island and Pacific Railroad Company became the purchaser under the agreement herein named, for the sum of two millions two hundred thousand dollars, & said sale is confirmed by this court. The Mississippi and Missouri Railroad Company has, except for the purpose
81 of closing its business, ceased to exist, and abandoned the purpose for which it was created. The said sum of two millions two hundred thousand dollars, bid at said sale, was not paid down, but the trustees, plaintiffs in that suit, gave a receipt to the officer conducting the sale for the amount without actual payment, and the said sum is to be paid as part and parcel of the five and one-half millions of dollars, the contract price between said railroad company and The Chicago & Rock Island Railroad Company, under the contract of first November, 1865, and as part of said sum is to be paid to the parties and in the manner required by said contract, and the resolutions of the stock & bond holders of twentieth October, 1865, by which sixteen per cent. is to be paid on each share of stock.

The said Stanton, Wilson, and Elliott, the persons named in said resolution of twentieth October, 1865, were appointed trustees to get the stock and bonds of said Mississippi and Missouri Railroad Company, and deliver to the owners thereof certificates of the respective amounts they were to receive under the distribution of said proposal of said sale. The said City of Davenport has surrendered its certificates of stock, and agreed to receive its share of the bonds and money provided by said resolutions of 20th October. The said city also owns sixteen thousand dollars' worth of stock which was not deposited in trust when its

said bonds were issued, but which is entitled to said dividend of sixteen per cent. The said Chicago and Rock Island Railroad Company is ready and willing, and is about to pay, said five and a half millions & interest as required by said contract. The holders of said stock in the Mississippi and Missouri Railroad Company when they surrendered the same to said trustees, Stanton, Elliott, and Wilson, agreed with them to ratify the authority given to the trustees to consent to the sale of the Mississippi & Missouri Railroad, and to surrender their stock, & the trustees agree to deliver to them the new bonds of the new company in payment of said sixteen per cent., as by a copy of said agreement hereto annexed, will more fully appear. All of said stockholders entitled thereto have assented to said sale. The City of Davenport, and all other stockholders assenting to said sale, are entitled to said sixteen per cent. dividend on all their stock. None of the parties, in any of their arrangements, made any provision for the payment of said guaranteed debt of the plaintiffs.

6. That in a court of equity the whole property of the Mississippi and Missouri Railroad Company is a trust fund for the benefit of its creditors and stockholders.

By the agreement of sale & the subsequent acts the said corporation, which is insolvent, will become extinct, and is so now, except for the purpose of closing up its business, and has abandoned the purpose for which it was created. That all of said defendants have agreed with The Mississippi & Missouri Railroad Company to unite in disposing of all its property, & making said dividend to its stockholders without providing for the payment of the debt due to the plaintiffs by said judgments, and by said bonds and c'upons. The plaintiff does not make the said stockholders parties to this bill, because the stock is divided into thirty-four thousand shares and upwards. Very few of the stockholders reside in Iowa; none of them known to be citizens of Iowa. Except The City of Davenport, they are citizens of different States. It is impossible to make them all parties, and their interest is represented fully by their corporate body, The Mississippi & Missouri Railroad Company.

7. The plaintiffs claim that in this court they have, by obtaining their judgments, execution, and return, acquired a superior lien on the
82 hypothecated stock of The City of Davenport, and on their stock not hypothecated. That the dividend on the same is not sufficient to pay their bonds now due, judgments, interest, and costs. That they are entitled in this court to have their whole debt, which has been guaranteed by The Mississippi and Missouri Railroad Company, paid out of the dividend which is intended to be paid by The Chicago and Rock Island Railroad Company, and to go to the said stockholders. That The Mississippi and Missouri Railroad Company and the said City of Davenport, both being insolvent, the plaintiffs are entitled to the aid of this court, in causing the property of both of them in said railway corporation, to be applied to the plaintiffs' claims against them, and that neither The Mississippi and Missouri Railroad Company, nor its stockholders, can make any agreement to receive a benefit from the sale of the road and its franchises, and leave the plaintiffs' claims unpaid. That such acts as are proposed are not only contrary to equity, but prohibited by the laws of Iowa, under which said railroad company was created. This the defendants intend to do, and if they can dispose of said intended dividend without payment of the plaintiffs' claims, there is no property of the defendants out of which the plaintiffs' debt can be made.

8. The plaintiffs aver that they have no adequate remedy at law, and the acts of the defendants are contrary to equity. They pray for a writ

of subpœna from this court to be directed to said defendants, and each of them, commanding them to appear before it at a day therein named, and answer all the allegations of this bill. That defendants may be enjoined from making said dividend, or receiving the same. That the dividend on the stock of The City of Davenport may be first applied as far as it will go to the payment of the plaintiffs' judgments, interest, and costs, and that so much of said dividend of sixteen per cent. as need be, which is to be made out of the stockholders of the Mississippi and Missouri Railroad Company generally, may be retained, and applied to the payment of the balance of the plaintiffs' judgment, and the residue of their debt, which is not in judgment; that an account may be taken of what is due to the plaintiffs. That if they are not entitled to a pref'rence of The City of Davenport's dividend, they may be decreed a pro-rata dividend. That so much of the dividend as is payable in cash be ordered to be paid directly to the plaintiffs. That so much as is to be paid in bonds be ordered to be sold until a sufficient amount is made to pay the plaintiffs' claims, and for such other relief as the nature of their case may require.

GRANT AND SMITH,
Sol's for Complainants.

Copy of bond, c'upon, & guaranty.—State of Iowa.—Bond of the city of Davenport.

No. 10. $1,000.

Be it known that The City of Davenport, in the State of Iowa, owes to Ebenezer Cook, or bearer, the sum of one thousand dollars, for money borrowed, the receipt of which is hereby acknowledged; which sum the said city is obligated to pay on the first day of August, 1865, with interest on said sum of one thousand dollars, at the yearly rate of ten per cent., payable semi-annually, at the office of E. W. Clark, Dodge & Co., in the city of New York, and the faith of said City of Davenport is hereby pledged for the payment of the semi-annual interest, and
83 the ultimate redemption of the principal; and it is hereby agreed, in behalf of the said City of Davenport, that, on the surrender of this bond to the undersigned, or their successors in office, at any time before the first day of August, 1860, they will deliver to the owner of the bond, in payment of the same, one thousand dollars in the capital stock of the Mississippi and Missouri Railroad Company.

In testimony whereof the said city has caused the corporate seal thereof to be affixed to this bond, and the same to be signed by the mayor and clerk, this first day of August, A. D. 1853.

[SEAL.] JOHN A. BOYD, *Mayor.*

Attest:
R. K. ALLEN, *Clerk.*

Copy of c'upons.

$50. No. .

The City of Davenport will pay the bearer fifty dollars, on the first day of August, 1861, at the office of E. W. Clark, Dodge & Co., being six months' interest on bond No. 10.

JOHN A. BOYD, *Mayor.*

Copy of guaranty.

In consideration that The City of Davenport has transferred to A. C. Flagg, treasurer, &c., the stock held by said city in the Mississippi and Missouri Railroad Co., in trust, the said Mississippi and Missouri Railroad Company hereby guarantees to the holder of this bond the payment of interest and principal, according to the terms thereof.

In witness whereof the president & treasurer of said company have hereunto signed their names and caused the seal of said corporation to be hereunto affixed this eighth day of September, A. D. 1853.

[SEAL.] JOHN A. DIX, *President.*
A. C. FLAGG, *Treasurer.*

Endorsed: Filed July 9, 1866.

W. G. WOODWARD, *Clerk,*
By S. S. ETHRIDGE, *Deputy.*

Now, on this day, the twenty-fifth day of September, A. D. 1866, came Joseph Young, by Grant, his solicitor, and filed in said clerk's office his amendment to the bill of the plaintiffs in said entitled cause; which amendment to bill is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
ag't
THE CITY OF DAVENPORT & OTHERS.

To the judges of the circuit court of the United States for the district of Iowa:

Joseph Young, who avers that he is a citizen of the State of Pennsylvania, now comes into court and prays to be made a coplaintiff in the above bill in equity.

1st. And the said Joseph Young avers that he is the owner and
84 holder of the following bonds, to wit: Nos. 84, 68, 67, 66, 82, 72, 77, 80, 87, 88, 100, 12, 73, 89, 90, 39, 79, 80, 81, 70, 17, 21, 22, 25, 26, 40, 43, 44, 1, 15, 16, 28, 13, 14, 23, 85, 9, 10, 94, 92, 93, 64, 65, 97, 98, 11, 71, 20, 19, 24, 47, 48, 49, 50, 56, 57, 58, 59, 33, 34, 2, 3, 4, 5, 6, 31, 22, 25, 36, 37, 38, 41, 42, 45, 46, 51, 52, 53, 54, 55, 27, 18, 29, 30, 40, 99, 83, for the sum of $500 each; and the following bonds of $1,000 each, to wit: Nos. 51, 3, 48, 49, 75, 76, 77, 79, 80, 5, 13, 68, 71, 78, 69, 70, 55, 65, 73, 54, 66, 67, 56, 57, 58, 59, 60, 11, 12, 40, 29, 72, 52, 53, 19, 20, 23, 22, 27, 26, 9, 61, 62, 63, 64, 28, 17, 74, 24, 7, 6, 18, 10, 25, 21; which were issued and delivered by The City of Muscatine, a municipal corporation, created by, and a citizen of, the State of Iowa, to the said The Mississippi & Missouri Railroad Company, in payment of subscription to the stock of said railroad company, bearing date December 31st, 1855, and payable to Adam Ogilvie, or bearer, on the first day of January, A. D. 1876, with interest, at ten per cent., for which c'upons or interest notes were attached to said bonds; that said Mississippi and Missouri Railroad Company, for value received, wrote upon said bonds the following guaranty:

"In consideration that The City of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said city in the Mississippi and Missouri Railroad Company, the said railroad company hereby

of subpœna from this court to be directed to said defendants, and each of them, commanding them to appear before it at a day therein named, and answer all the allegations of this bill. That defendants may be enjoined from making said dividend, or receiving the same. That the dividend on the stock of The City of Davenport may be first applied as far as it will go to the payment of the plaintiffs' judgments, interest, and costs, and that so much of said dividend of sixteen per cent. as need be, which is to be made out of the stockholders of the Mississippi and Missouri Railroad Company generally, may be retained, and applied to the payment of the balance of the plaintiffs' judgment, and the residue of their debt, which is not in judgment; that an account may be taken of what is due to the plaintiffs. That if they are not entitled to a pref'rence of The City of Davenport's dividend, they may be decreed a pro-rata dividend. That so much of the dividend as is payable in cash be ordered to be paid directly to the plaintiffs. That so much as is to be paid in bonds be ordered to be sold until a sufficient amount is made to pay the plaintiffs' claims, and for such other relief as the nature of their case may require.

GRANT AND SMITH,
Sol's for Complainants.

Copy of bond, c'upon, & guaranty.—State of Iowa.—Bond of the city of Davenport.

No. 10. $1,000.

Be it known that The City of Davenport, in the State of Iowa, owes to Ebenezer Cook, or bearer, the sum of one thousand dollars, for money borrowed, the receipt of which is hereby acknowledged; which sum the said city is obligated to pay on the first day of August, 1865, with interest on said sum of one thousand dollars, at the yearly rate of ten per cent., payable semi-annually, at the office of E. W. Clark, Dodge & Co., in the city of New York, and the faith of said City of Davenport is hereby pledged for the payment of the semi-annual interest, and
83 the ultimate redemption of the principal; and it is hereby agreed, in behalf of the said City of Davenport, that, on the surrender of this bond to the undersigned, or their successors in office, at any time before the first day of August, 1860, they will deliver to the owner of the bond, in payment of the same, one thousand dollars in the capital stock of the Mississippi and Missouri Railroad Company.

In testimony whereof the said city has caused the corporate seal thereof to be affixed to this bond, and the same to be signed by the mayor and clerk, this first day of August, A. D. 1853.

[SEAL.] JOHN A. BOYD, *Mayor.*

Attest:
R. K. ALLEN, *Clerk.*

Copy of c'upons.

$50. No.

The City of Davenport will pay the bearer fifty dollars, on the first day of August, 1861, at the office of E. W. Clark, Dodge & Co., being six months' interest on bond No. 10.

JOHN A. BOYD, *Mayor.*

Copy of guaranty.

In consideration that The City of Davenport has transferred to A. C. Flagg, treasurer, &c., the stock held by said city in the Mississippi and Missouri Railroad Co., in trust, the said Mississippi and Missouri Railroad Company hereby guarantees to the holder of this bond the payment of interest and principal, according to the terms thereof.

In witness whereof the president & treasurer of said company have hereunto signed their names and caused the seal of said corporation to be hereunto affixed this eighth day of September, A. D. 1853.

[SEAL.] JOHN A. DIX, *President.*
A. C. FLAGG, *Treasurer.*

Endorsed: Filed July 9, 1866.

W. G. WOODWARD, *Clerk,*
By S. S. ETHRIDGE, *Deputy.*

Now, on this day, the twenty-fifth day of September, A. D. 1866, came Joseph Young, by Grant, his solicitor, and filed in said clerk's office his amendment to the bill of the plaintiffs in said entitled cause; which amendment to bill is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
ag't
THE CITY OF DAVENPORT & OTHERS.

To the judges of the circuit court of the United States for the district of Iowa:

Joseph Young, who avers that he is a citizen of the State of Pennsylvania, now comes into court and prays to be made a coplaintiff in the above bill in equity.

1st. And the said Joseph Young avers that he is the owner and
84 holder of the following bonds, to wit: Nos. 84, 68, 67, 66, 82, 72, 77, 80, 87, 88, 100, 12, 73, 89, 90, 39, 79, 80, 81, 70, 17, 21, 22, 25, 26, 40, 43, 44, 1, 15, 16, 28, 13, 14, 23, 85, 9, 10, 94, 92, 93, 64, 65, 97, 98, 11, 71, 20, 19, 24, 47, 48, 49, 50, 56, 57, 58, 59, 33, 34, 2, 3, 4, 5, 6, 31, 22, 25, 36, 37, 38, 41, 42, 45, 46, 51, 52, 53, 54, 55, 27, 18, 29, 30, 40, 99, 83, for the sum of $500 each; and the following bonds of $1,000 each, to wit: Nos. 51, 3, 48, 49, 75, 76, 77, 79, 80, 5, 13, 68, 71, 78, 69, 70, 55, 65, 73, 54, 66, 67, 56, 57, 58, 59, 60, 11, 12, 40, 29, 72, 52, 53, 19, 20, 23, 22, 27, 26, 9, 61, 62, 63, 64, 28, 17, 74, 24, 7, 6, 18, 10, 25, 21; which were issued and delivered by The City of Muscatine, a municipal corporation, created by, and a citizen of, the State of Iowa, to the said The Mississippi & Missouri Railroad Company, in payment of subscription to the stock of said railroad company, bearing date December 31st, 1855, and payable to Adam Ogilvie, or bearer, on the first day of January, A. D. 1876, with interest, at ten per cent., for which c'upons or interest notes were attached to said bonds; that said Mississippi and Missouri Railroad Company, for value received, wrote upon said bonds the following guaranty:

"In consideration that The City of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said city in the Mississippi and Missouri Railroad Company, the said railroad company hereby

guarantees the prompt, payment of the interest, as it matures, & the eventual payment of the principal of this bond.

"In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this first day of January, 1856.

[SEAL.] (Signed) "EBENEZER COOK, *President.*
(Signed) "A. C. FLAGG, *Treasurer.*"

That, after such guaranty, the said railroad company delivered and sold the same in open market, and the plaintiff is the holder of the above-numbered bonds. A copy of said bonds & c'upons is hereto annexed.

That there is due on said bonds, for interest, the sum of sixty-five thousand and two hundred and sixty-five ($65,265) dollars, and the principal will be due on the first day of January, A. D. 1876, of $97,000.

That judgment has been recovered for prior interest on said bonds in this court, by Selden S. Walkey, against The City of Muscatine, and execution returned, "No property found." That said City of Muscatine is insolvent; that it has a population of seven thousand inhabitants, a bonded debt of $280,000, and a tax-list of one million eight hundred thousand dollars.

2nd. And the said Joseph Young further avers, that he is the holder & owner of the following bonds of The City of Davenport, to wit: Nos. 62, 63, & 64, for the sum of $1,000 each, and Nos. 67, 70, 51, 53, 55, for the sum of $500 each, which were issued and delivered by The City of Davenport, a municipal corporation created by, and a citizen of, the State of Iowa, to the said Mississippi and Missouri Railroad Company, in payment of subscriptions to the stock of said railroad company, bearing date the first day of August, A. D. 1853, and payable to Ebenezer Cook, or bearer, on the first day of August, A. D. 1865, with interest at ten per cent., for which c'upons or interest-notes were attached to said bonds; that said Mississippi & Missouri Railroad Company, for value received, wrote upon said bonds the following guaranty:

"In consideration that The City of Davenport has transferred
85 to A. C. Flagg, treasurer, &c., the stock held by said city in the Mississippi and Missouri Railroad Company, in trust, the said Mississippi and Missouri Railroad Company hereby guarantee to the holder of this bond the payment of interest and principal according to the terms thereof.

"In witness whereof the president and treasurer of said company have hereunto signed their names and caused the seal of said corporation to be hereunto affixed, at New York, this 25th day of August, A. D. 1854.

[SEAL.] (Signed) "JOHN A. DIX, *President.*
(Signed) "A. C. FLAGG, *Treasurer.*"

That after such guaranty, the said railroad company delivered and sold the same, in open market, and the plaintiff is the holder of the above-numbered bonds; and a copy of said bonds, c'upons, and guaranty is hereunto annexed; that there is due on said bonds, for interest, the sum of twenty-nine hundred and twenty-five ($2,925) , and the principal of fifty-five hundred ($5,500) dollars fell due August first, 1865.

That judgment has been recovered for prior interest on said bonds in this court by John Weber, against The City of Davenport, and execution returned, "No property found." That said City of Davenport is insolvent; that it has a population of fifteen thousand inhabitants, a bond debt of $400,000, and a tax-list of three million seven hundred thousand dollars.

3rd. And the said Joseph Young further avers that he is the holder & owner of the following bonds, to wit: Nos. 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 22, 23, 24, 25, 26, 94, 95, 72, 73, 61, 71, 68, 66, 67, 70, 69, 96, 97, 98, 65, 64, 79, 80, 61, 62, 77, 78, 76, 75, 74, 73, for the sum of $500 each, which were issued and delivered by The City of Iowa City, a municipal corporation created by, and a citizen of, the State of Iowa, to the said Mississippi & Missouri Railroad Company, in payment of subscriptions to the stock of said railroad company, bearing date March first, A. D. 1856, to John A. Dix, or bearer, and payable on the first day of January, A. D. 1876, with interest at ten per cent. per annum, for which c'upons or interest notes were attached to said bonds. That said Mississippi and Missouri Railroad Company, for value received, wrote upon said bonds the following guaranty:

"In consideration that The City of Iowa City has transferred to A. C. Flagg, treasurer, in trust, the stock of the said city in the Mississippi & Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the interest as it matures, & the eventual payment of the principal of this bond.

"In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their hands & caused the seal of said company to be affixed, at New York, this 20th day of August, 1856.

[SEAL.] (Signed) "JOHN A. DIX, *President.*
(Signed) "A. C. FLAGG, *Treasurer.*"

That after such guaranty, the said railroad company delivered and sold the same in open market, and the plaintiff is the holder of the above-numbered bonds; a copy of said bonds, c'upons, and guaranty is hereto annexed. That there is due on said bonds, for interest, the sum of twenty-three thousand four hundred and forty-four dollars, and the principal will be due on the first day of January, A. D. 1876, $35,000.

That judgment has been recovered for prior interest on said
86 bonds in this court by P. S. Barlow against The City of Iowa City, and execution returned, "No property found." That said City of Iowa City is insolvent, that it has a population of five thousand, and bond debt of $120,000, and a tax-list of less than two million dollars.

4th. And the said Joseph Young further avers that he is the holder and owner of the following numbered bonds of Scott County, to wit: 25, 4, 20, 14, 24, 5, 12, 18, 17, 6, 9. 16, 19, 13, 11, 21, 22, 23, 10, & 8, for the sum of $1,000 each, and Nos. 10, 16, 18, 20, 21, 22, 23, 24, 25, 26, 27, 45, 50, 69, 11, 12, 10, 13, 17, 19, 31, 38, 4, & 15, of five hundred dollars each, which were issued and delivered by The County of Scott, a municipal corporation created by, and a citizen of, the State of Iowa, to the said Mississippi & Missouri Railroad Company in payment of subscriptions to the stock of said railroad company, bearing date October 1st, A. D. 1853, and payable to Ebenezer Cook, or bearer, on the first day of October, A. D. 1868, with interest, at the rate of ten per cent., for which c'upon or interest notes were attached to said bonds. That said

Mississippi and Missouri Railroad Company, for value received, wrote upon said bonds the following guaranty:

"In consideration that The County of Scott has transferred to A. C. Flagg, treasurer, &c., the stock held by said county in the Mississippi and Missouri Railroad Company, in trust, the said Mississippi and Missouri Railroad Company hereby guarantee to the holder of this bond the payment of principal and interest, according to the terms thereof.

"In witness whereof the president & treasurer of said company have hereunto signed their names & caused the seal of said corporation to be hereunto affixed, at New York, this first day of March, A. D. 1854.

[SEAL.] (Signed) "JOHN A. DIX, *President.*
(Signed) "A. C. FLAGG, *Treasurer.*"

That after such guaranty, the said railroad company delivered & sold the same in open market, and the plaintiff is the holder of the above-numbered bonds; a copy of said bonds, c'upons, & guaranty is hereto annexed. That there is due on said bonds for interest the sum of seventeen thousand ($17,000) dollars, and the principal will be due on the first October, 1868, of $31,000.

That judgment has been recovered for prior interest on said bonds in this court by against The County of Scott, and execution returned, "No property found." That said County of Scott has a population of thirty thousand, and a tax-list of seven millions dollars, and a bond debt of $100,000.

5th. And the said Joseph Young further avers that he is the holder and owner of the following numbered bonds of the county of Muscatine, to wit: 34, 35, 36, 37, 5, 41, 43, 20, 21, 46, 42, 26, 52, 54, 56, 57, 58, 2, 38, 39, 87, 18, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 1, 17, 19, 3, 4, 14, 17, 19, 16, B No. 18, B No. 7, for the sum of one thousand dollars each, which were issued & delivered by The County of Muscatine, a municipal corporation, created by, and a citizen of, the State of Iowa, to the said Mississippi & Missouri Railroad Company in payment of subscription to the stock of said railroad company, bearing date January second, 1854, and payable to George C. Stone, or bearer, on the first day of January, A. D. 1874, with interest at the rate of ten per cent. per annum, for which c'upons or interest-notes were attached to said bonds. That said Mississippi and Missouri Railroad Company wrote upon said bonds the following guaranty:

"In consideration that The County of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said county in the
87 Mississippi and Missouri Railroad Company, the said railroad company hereby guarantee the prompt payment of the principal of this bond.

"In witness whereof, by resolution of the board of directors, the vice-president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this 26th day of September, 1854.

{M. & M. R. R. SEAL.} (Signed) "EBENEZER COOK, *V. Pres't.*
(Signed) "A. C. FLAGG, *Treas.*"

That after such guaranty, the said railroad company delivered & sold the same in open market. The plaintiff is the holder of the above-numbered bonds; a copy of said bonds, c'upons, and guaranty, is hereto annexed. That there is due on said bonds for interest the sum of $36,677 (thirty-six thousand six hundred and seventy-seven dollars,)

and the principal will be due January first, 1874, of $47,000. That said county has neglected & failed to pay the interest due on said bonds since 1860, and has no property out of which said amounts due can be made; that judgments have been recovered against said county, executions issued and returned, "No property found." That said County of Muscatine has a population of twenty thousand inhabitants, a tax-list of four millions of dollars, and a bond debt of $200,000.

6th. And said Joseph Young further avers that, in addition to the particular bonds and c'upons herein before specified, he is the owner and holder ot divers other like bonds and c'upons, so executed respectively by the said cities of Davenport, Muscatine, Iowa City, & the said Counties of Scott, Muscatine, & Johnson, and so guarantied by the said Mississippi and Missouri R. R. Co., & of judgments recovered thereon against the said cities and counties respectively, and said railroad co., in this court, which bonds & c'upons, & the guaranties thereof are respectively in the same form precisely as those of the same city or county hereinbefore specified, & belong to the same class of bonds respectively as those so specified, which said additional bonds and c'upons & the judgments thereon amount, in the aggregate, to the sum of four hundred thousand dollars.

And the plaintiff adopts & renews all of the allegations of plaintiffs' bill, and applies them to his own case.

And he prays that he may have the same relief as said other plaintiffs, and he avers that, as to said debt not due, he is willing to receive the same now, if the defendants will assent thereto, and if they will not he prays that said dividend of sixteen per cent. may be seized by this court & held & retained in such manner as this court may direct until said debts are due.

GRANT, *For Plaintiff.*

Copy of bonds, guarantee, & c'upons.—Copy of Iowa City bonds, c'upons, and guaranty.

No. 83. $500.

Bond of the city of Iowa City, United States of America, State of Iowa.

Be it known that The City of Iowa City owes to John A. Dix, or bearer, the sum of five hundred dollars, for money borrowed to pay the subscription of said city to the capital stock of the Mississippi and Missouri Railroad Company, the receipt whereof is hereby acknowledged, and which sum the said Iowa City hereby promises to pay, at the office of E. W. Clark, Dodge & Co., in the city of New York,
88 on the first day of January, eighteen hundred and seventy, with interest on said sum of five hundred dollars, at the rate of ten per cent. per annum, payable annually on the first day of January in each year, and the faith of the said Iowa City is hereby pledged for the annual payment of interest, & the ultimate redemption of the principal.

And I, G. D. Wordin, mayor of *of* said Iowa City, do hereby certify that, by a vote of the legal electors of the said Iowa City, at an election held on the 12th day of March, 1855, in accordance with an ordinance of the city council of Iowa City, sanctioning the same, *that* the said city was authorized to issue city bonds to the amount of fifty thousand dollars, for the purpose aforesaid, bearing interest at ten per cent. per annum, and that the above is one of the bonds issued for said purpose,

and is entitled to the benefit arising from the sinking fund created by said ordinance to provide for the payment of principal & interest of said bonds.

In testimony whereof the said city has caused the corporate seal thereof to be affixed to this bond, & the same to be signed by the mayor and attested by the recorder, this first day of March, 1856.

(Signed) G. D. WORDIN, *Mayor.*

Attested:

J. G. SPERRY, *Recorder.*

(Indorsed:)

In consideration that The City of Iowa City has transferred to A. C. Flagg, treasurer, in trust, the stock of the said city in the Mississippi & Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the interest as it matures, & the eventual payment of the principal of this bond.

In witness whereof, by virtue of a resolution of the board of directors, the president & treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this 20th day of August, 1856.

[SEAL.] (Signed) JOHN A. DIX, *President.*

(Signed) A. C. FLAGG, *Treasurer.*

Copy of c'upons.

The City of Iowa City will pay the bearer fifty dollars, at the office of E. W. Clark, Dodge & Co., in the city of New York, on the first day of January, 1862, being one year's interest on bond No. 83.

$50. G. D. WORDIN, *Mayor.*

Bonds, c'upons, and guaranty all alike, except Nos. & time of payment of c'upons.

Copy of Muscatine City bonds.—1,000.—*Bond of the city of Muscatine, United States of America, State of Iowa.—One thousand dollars.*

Be it known that The City of Muscatine owes to Adam Ogilvie, or bearer, the sum of one thousand dollars, for money borrowed, the receipt of which is hereby acknowledged, and which sum The City of Muscatine hereby promises to pay, at the office of E. W. Clark, Dodge & Co., in the city of New York, on the first day of January, eighteen hundred and seventy-six, with interest on said sum of one thousand dollars, at the annual rate of ten per cent., payable semi-annually,
89 on the first day of January and first day of July, in each year; and the faith of the said City of Muscatine is hereby pledged for the semi-annual payment of the interest, and the ultimate redemption of the principal upon the surrendering of this bond to A. C. Flagg, treasurer, in trust, at any time previous to said first January, 1876, the holder thereof will be entitled to ten shares of the capital stock of the Mississippi and Missouri Railroad Company in satisfaction thereof.

Wherefore I, J. H. Wallace, mayor of the city of Muscatine, do hereby certify that, by a vote of the legal electors of the said city of Muscatine, at an election had 13th August, 1855, in accordance with an ordinance of a common council sanctioning the same, that the said

city was authorized to borrow the sum of one hundred and thirty thousand dollars, and to issue its bonds therefor, bearing interest at ten per cent. per annum, and that the above is one of the bonds given for said loan.

In testimony whereof I have hereunto set my hand and affixed the seal of said city, this thirty-first day of December, A. D. 1855.

[SEAL.] J. H. WALLACE, *Mayor.*

Attested:

D. P. JOHNSON, *Recorder.*

The City of Muscatine will pay the bearer, on the first day of January, 1865, fifty dollars, at the office of E. W. Clark, Dodge & Co., in the city of New York, interest due on their bond No. 76.

$50 . J. H. WALLACE, *Mayor.*

In consideration that The City of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said city in the Mississippi and Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the interest as it matures, and the eventual payment of the principal of this bond.

In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this first day of January, 1856.

[SEAL.] EBENEZER COOK, *V. President.*
A. C. FLAGG, *Treasurer.*

Copy of Muscatine Co. bonds, c'upons, and guaranty.—State of Iowa.—Bond of the county of Muscatine.

B, No. 18. $1,000.

Be it known that The County of Muscatine, in the State of Iowa, owes to George C. Stone, or bearer, the sum of one thousand dollars for money borrowed, the receipt whereof is hereby acknowledged, which sum the said County of Muscatine is obligated to pay on the first day of January, 1874, with interest on said sum of one thousand dollars, at the yearly rate of ten per cent., payable annually, at the office of the county treasurer, in Muscatine County, and the faith of the said county of Muscatine is hereby pledged for the annual payment of the interest, and the ultimate redemption of the principal.

In testimony whereof I, Arthur Washburn, judge of said county, have hereunto set my hand and affixed the seal of said county, this second day of January, A. D. 1854.

[SEAL.] ARTHUR WASHBURN,
Co. Judge.

Attest:

W'M LEFFINGWELL, *Co. Clerk.*

90 (Endorsed:)

In consideration that The County of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said county in the Mississippi and Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the principal of this bond.

In witness whereof, by virtue of a resolution of the board of directors,

the vice-president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this 26th day of September, 1854.

[SEAL.] EBENEZER COOK, *V. President.*
A. C. FLAGG, *Treas.*

$100. B, No. 20. $1,000.

The County of Muscatine will pay the bearer one hundred dollars on the first day of January, 1874, at the office of the county treasurer, in Muscatine County, being one year's interest on bond B, No. 18.

ARTHUR WASHBURN,
County Judge.

Copies of the bonds, c'upons, and guaranty of city of Davenport are the same as those in the original bill, to which reference is made.

Copy of Scott County bonds, c'upons, and guaranty.—Bond of the county of Scott.

No. 10. $500.

Be it known that The County of Scott, in the State of Iowa, in its corporate capacity, owes to Ebenezer Cook, or bearer, the sum of five hundred dollars, for money borrowed, the receipt of which is hereby acknowledged, which sum the said county is obligated to pay, on the first day of October, 1868, with interest on said sum of five hundred dollars, at the yearly rate of ten per cent., payable semi-annually, at the office of E. W. Clark, Dodge & Co., in the city of New York, and the faith of the said county of Scott is hereby pledged for the semi annual payment of the interest, and the ultimate redemption of the principal; and it is hereby agreed, on behalf of said county of Scott, that, on the surrender of this bond to the undersigned, or their successors in office, on or before the first day of October, 1860, they will deliver to the owner of the bond, in payment of the same, five hundred dollars in the capital stock of the Mississippi and Missouri Railroad Company.

In testimony whereof the said County of Scott has caused the corporate seal thereof to be affixed to this bond, & the same to be signed by their county judge & attested by their clerk, this 1st day of October, A. D. 1853.

[SEAL.] W'M BURRIS,
County Judge.

Attest:
JAMES , *Clerk.*

In consideration that The County of Scott has transferred to A. C. Flagg, treasurer, &c., the stock held by said county in the Mississippi and Missouri Railroad Company, in trust, the said Mississippi & Missouri Railroad Company hereby guarantee to the holder of this bond the payment of interest & principal according to the terms thereof.

90½ In witness whereof the president and treasurer of said company have hereunto signed their names and caused the seal of said corporation to be hereto affixed, at New York, this first day of March, A. D. 1854.

[SEAL.] JOHN A. DIX, *President.*
A. C. FLAGG, *Treasurer.*

$25. *C'upon.* $500.

The County of Scott will pay the bearer twenty-five dollars on the first day of October, 1865, at the office of E. W. Clark, Dodge & Co., in the city of New York, for six months' interest on bond No. 10.

W. BURRIS, *Co. Judge.*

(Endorsed:) Filed Sept. 25, 1866.

W. G. WOODWARD, *Clerk.*
By S. S. ETHRIDGE, *Deputy.*

On this day, the twenty-seventh day of February, 1867, three writs of subpœna were issued out of said clerk's office against The City of Muscatine, The City of Davenport, The City of Iowa City, The County of Scott, The Mississippi and Missouri Railroad Company, The Chicago & Rock Island Railroad Company, George W. Stanton, j'r, John Elliott, Blakely Wilson, and The Chicago, Rock Island and Pacific Railroad Company; which said writs, with the acceptances of service thereon, are in the words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Iowa, ss:*

The President of the United States to The City of Muscatine, The City of Davenport, The City of Iowa City, The County of Scott, The Mississippi and Missouri Railroad Company, The Chicago and Rock Island Railroad Company, George W. Stanton, j'r, John Elliott, Blakely Wilson, & The Chicago, Rock Island and Pacific Railroad Company:

We command you and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday of April, 1867, it being the first day of April, A. D. 1867, to answer to the bill of complaint of Mark Howard and John Weber, filed in the office of the clerk of said court, & then & there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa; returnable on the first Monday of April, A. D. 1867.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Des Moines, this the 27th day of February, A. D. 1867, and of the independence the year.

[SEAL.] W. G. WOODWARD, *Clerk.*

[50-cents U. S. rev. stamp affixed & cancelled.]

MEMORANDUM.—The within-named defendants are notified that, unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be *be* taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk.*

91 Due and legal service of the within subpœna accepted this 27th day of February, A. D. 1867, for The City of Muscatine, and service by marshall waived.

B. HERSHEY,
For Mayor, &c., the City of Muscatine.

(Endorsed:) Filed , 186 .

UNITED STATES OF AMERICA, *District of Iowa, ss:*

The President of the United States to The City of Muscatine, The City of Davenport, The City of Iowa City, The County of Scott, The Mississippi & Missouri Railroad Company, The Chicago and Rock Island Railroad Company, George W. Stanton, j'r, John Elliott, and Blakely Wilson, & The Chicago, Rock Island and Pacific Railroad Company:

We command you and each of you that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday of April, 1867, it being the first day of April next, (A. D. 1867,) to answer to the bill of complaint of Mark Howard & John Weber, filed in the office of the clerk of said court, and then and there to receive and abide by such judgment or decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa; returnable on the first Monday of April, A. D. 1867.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Des Moines, this the 27th day of February, A. D. 1867, and of the independence the year.

[SEAL.] W. G. WOODWARD, *Clerk.*

[50-cent U. S. rev. stamp affixed and cancelled.]

MEMORANDUM.—The within-named defendants are notified that, unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk.*

Due and legal service of the within subpœna accepted this 27th day of February, A. D. 1867, for The City of Iowa City, and service by marshall waived.

J. Y. BLACKWELL,
Attorney for City of Iowa City.

(Endorsed:) Filed , 186 .

UNITED STATES OF AMERICA, *State of Iowa, ss:*

The President of the United States to The City of Muscatine, The City of Davenport, The City of Iowa City, The County of Scott, The Mississippi and Missouri Railroad Company, The Chicago & Rock Island Railroad Company, George W. Stanton, j'r, John Elliott, & Blakely Wilson, & The Chicago, Rock Island & Pacific Railroad Company:

We command you and each of you that you appear before the judges of the circuit court of the United States for the district of Iowa,
92 at Des Moines, on the first Monday of April, 1867, it being the first day of April next, (A. D. 1867,) to answer to the bill of complaint of Mark Howard and John Weber, filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa; returnable on the first Monday of April, A. D. 1867.

Witness the Hon. Salmon P. Chase Chief Justice of the Supreme

Court of the United States, at Des Moines, this the 27th day of February, A. D. 1867, and of the indepen'ence the year.

[SEAL.] W. G. WOODWARD, *Clerk.*

[50-cent U. S. revenue stamp affixed & cancelled.]

MEMORANDUM.—The within-named defendants are notified that, unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk.*

Due and legal service of the within subpœna accepted this 27th day of February, A. D. 1867, for The County of Scott, & service of marshall waived.

JOHN N. DAVIS,
Chairman Board of Supervisors for the County of Scott.

(Endorsed:) Filed , A. D. 186 .

On this day, the sixteenth day of May, A. D. 1867, came the defendants George W. Stanton, j'r, Blakely Wilson, & John Elliott, by James Emott, and Cook and Drury, their solicitors, and filed in said clerk's office their answer to the plaintiffs' bill; which answer is in the words & figures following, to wit:

In the circuit court of the United States of Iowa. In equity.

MARK HOWARD AND JOHN WEBER
against
GEORGE W. STANTON, J'R, JOHN ELLIOTT, and Blakely Wilson, impleaded with The City of Davenport & others.

The seperate answer of the defendants George W. Stanton, j'r, John Elliott, and Blakely Wilson, to the bill of complaint of the above plaintiffs, respectfully showeth—

These defendants, impleaded as above, jointly and severally answering, say—

That they have no knowledge or information, sufficient to form a belief, whether said plaintiff recovered a judgment against The City of Davenport; whether an execution has been issued on such judgment and returned unsatisfied; whether the debt, population, and taxable property of said city are as stated in said bill, or how otherwise; and whether said city has no property and is insolvent, as said matters are alleged in said bill; & these defendants therefore deny the allegations of said bill in that behalf.

93 That they have no knowledge or information, sufficient to form a belief, for what any judgment in favor of the plaintiff against The City of Davenport was recovered; or whether said city subscribed the amount alleged in the said bill of complaint to the stock of the Mississippi and Missouri Railroad Company, and issued its bonds to pay such subscription and received said scrip therefor; or whether said bonds were converted into stock; or whether said railroad company guaranteed the payment of said bonds; or whether the judg-

ments aforesaid was for interest on said bonds; or what amount of interest is due on said bonds; or whether said plaintiff is the holder of certain of said bonds, as the said several matters are alleged in said bill of complaint, & therefore they deny the said allegations of said complaint in these respects.

That they have no knowledge or information, sufficient to form a belief, whether the said railroad company had guaranteed the payment of over three hundred thousand dollars of bonds of certain cities & counties, as alleged in said bill, & therefore they deny the same. They deny that said corporation was insolvent, except as hereinafter stated.

But they admit that, as they are informed and believe, said Mississippi & Missouri Railroad Company had, at or before that time, failed to meet, and was unable from its earnings to pay, the interest on its bonds, which were secured by mortgages on said road and its equipments, such mortgages together covering the whole road, but in distinct parcels; and that such mortgages were, or certain of them were, then presently due & liable to be foreclosed.

These defendants deny that The Mississippi and Missouri Railroad Company, with its stockholders and bondholders, on or about the twentieth of October, 1865, at a meeting held for that purpose, made a proposal to sell out the said railroad, its franchises, and property, as alleged in said bill of complaint, & to divide the proceeds of said sale as therein stated; or that such proposal was accepted by The Chicago and Rock Island Railroad Company; or that the contract of November first, 1865, between The Mississippi and Missouri Railroad Company and The Chicago and Rock Island Railroad Company, was intended to carry out such purpose.

And these defendants deny the allegations of said bill of complaint in regard to the provisions of the contract between said Mississippi & Missouri Railroad Company and said Chicago and Rock Island Railroad Company, and they refer to said agreement for the true purport thereof.

And these defendants, further answering, say that, as they are informed and believe, and aver the truth to be, in October, 1865, the bonded debt of the Mississippi and Missouri Railroad Company, secured by mortgages which were a lien upon the road of said company, its depot grounds, stations, lands, & all its real estate, and upon all its rolling-stock and equipments, amounted to about six millions four hundred thousand dollars of principal, besides nearly five hundred thousand dollars of unpaid interest, or c'upons, the whole of which debt, both principal and interest, was a lien upon the real estate of said company which had preference and priority to any debt, demand, or liability upon any alleged guaranty by said company of the obligation of any city or other body or corporation. That, in addition to this mortgage debt the said railroad company was indebted on certain obligations known as income bonds, to the payment of which the earnings of the road were pledged, amounting to upwards of half a mil-
94 lion of dollars; that the holders of bonds secured by certain of the mortgages were threat'ning to foreclose the mortgages, and to sell the road in parcels, & in a manner greatly to the disadvantage of all concerned; that the liens & claims of the different mortgages were in certain respects conflicting, and that any litigation on the part of any bondholders or of the stockholders, such as would be likely to arise from hostile suits of foreclosure upon the mortgages, would involve delay & expense as well as difficulty in finding a purchaser, which would be 'njurious, if not ruinous, to all concerned.

And these defendants further say that, under these circumstances, on the eighteenth of October, 1865, a meeting was held of parties interested in the various classes of bonds, and in the stock of said company, which was the meeting referred to in said bill, but said meeting was not a meeting of the said corporation, or of its officers or members, nor was its acts or resolutions the action of said corporation. That at such meeting it was stated that The Chicago & Rock Island Railroad Company would probably be willing to buy said road, and the property of said company, and to pay for the same five millions and a half of dollars, provided a sale could be effected, and a title made amicably and immediately.

That the amount thus specified was not sufficient to pay the mortgage debt, or satisfy the liens on the property of the said company.

And thereupon it was resolved & agreed by the persons present at such meeting, that if the mortgage creditors and the stockholders of said company would assent to, & interpose no delay, and raise no question as to the foreclosure of the mortgage upon said road, or the distribution of the proceeds thereof, and if the said road could be sold to The Chicago & Rock Island Company, or any other purchaser who would be willing to pay five and a half of dollars, & that amount should be realized ultimately from said property, it should be distributed in a certain order and ratio among the creditors of said company, holding its bonds as aforesaid, & the said creditors, or such of them as assented to this arrangement, consented that, if that amount was thus realized, the sum of five hundred and fifty-two thousand five hundred dollars should be relinquished by them, the said bondholders, rateably, to be distributed among the persons holding the stock of the said company.

And these defendants say that until the said bondholders and mortgages were paid and satisfied, no other persons had any legal or equitable claim on the road and property of the company, or upon any amount in any way proceeding therefrom, and that such allowance therefrom to the persons holding stock in said road was not a payment to said railroad company or corporation, but was a disposition by the bondholders and creditors aforesaid of money, to which no other persons had any claim or title, legal or equitable.

And these defendants further say that they were appointed by said meeting a committee to obtain the assent of the creditors holding the bonds, and of the holders of the stock of said company, to the arrangement recom'ended by said meeting to an amicable foreclosure of said mortgages, and to the distribution of whatever amount should in any way be realized from said road among the creditors holding liens thereon, in the order specified in the schedule submitted to said meeting. That thereafter the agreement between The Mississippi and Missouri Railroad Company and The Chicago and Rock Island Railroad Company, dated the first day of November, 1865,
95 referred to in said bill, was made, to which these defendants pray leave to refer, and an agreement was made and executed by the creditors holding bonds of said Mississippi and Missouri Railroad Company, secured by the mortgages thereon, and the persons holding stock in said road with these defendants, to which they beg leave to refer.

And these defendants further allege that suits were commenced in this court by the mortgagees holding the several mortgages upon said road, lands, property, and franchises of said railroad company to foreclose said mortgage, and that such proceedings were thereupon had

that, on the eighth day of May, 1866, a judgment or decree was rendered by this court for the payment of said mortgages, respectively, by a time therein set; and, in default of such payment for the sale of said railroad, lands, property, franchises, by and under the direction of a special master commissioner, appointed for that purpose, to which judgment or decree, or to an exemplified copy thereof, these defendants ask leave to refer.

And afterwards the said mortgages not having been paid, or any of them, by the time in said decree specified, the said master commissioner proceeded to advertise said property for sale at public auction, in the manner directed in said decree, and, on the day appointed, sold the same at public auction, openly & fairly, in the usual manner of judicial sales, to the highest bidder, and the same brought the sum of two millions one hundred thousand dollars, that being the highest sum bid for the same.

These defendants deny that such purchase was made under any agreements, or otherwise than under said decree, or that said price was a nominal sum, or that said purchaser was bound to pay any larger sum or price; and said sale was afterwards duly confirmed by this court.

And the said Chicago & Rock Island Railroad Company proceeded afterwards, in pursuance of its agreements aforesaid, and in consideration of said creditors' assenting to such sale, to pay to these defendants, in their behalf, the price or sum which they had been willing and agreed to pay for said road; and these defendants, with the assent and by the authority of said creditors, are ready to distribute the said sum of $552,400 among persons holding stock in said company, the whole of said amount being paid to, and received by these defendants, not in cash, but in bonds or obligations of the Chicago, Rock Island and Pacific Railroad Company.

These defendants deny that they proceeded to get up the stock of said Mississippi and Missouri Railroad Company as alleged in said bill, or did any other acts in relation thereto than are hereinbefore set forth.

And these defendants deny all the allegations of said bill, in respect to the acts and agreements therein related & referred to, except as hereinbefore set forth, and ask leave to refer to said original agreements, respectively, when produced.

And they aver and insist that if said persons holding stock in said railroad are now entitled to said securities to the amount of $552,400, which are to be delivered to these defendants as aforesaid, the same the property of the creditors holding lien by mortgage on said railroad hereinbefore referred to, and these defendants are advised and insist that such creditors or their trustees are necessary parties to this suit, is defective by reason of their absence.

And these defendants are advised and insist that said plaintiff has no right or equity to prosecute this suit; they deny all wrong-doing or design in said bill charged against them, and they humbly
96 pray to be hence dismissed with their costs and charges in this behalf most wrongfully incurred.

JAMES EMOTT,
COOK AND DRURY,
Solicitors for Defendants herein named.

(Endorsed:) Filed May 16, 1867.

WOODWARD, *Clerk.*

And on the same day, the sixteenth day of May, A. D. 1867, came the defendant The Chicago, Rock Island & Pacific Railroad Company, by John P. Cook, its solicitor, and filed in the clerk's office its answer to the plaintiffs' bill; which answer is in the words & figures following, to wit:

United States circuit court in and for the district of Iowa.

STATE OF IOWA, *Scott County, ss:*

MARK HOWARD ET AL.
vs.
CITY OF DAVENPORT AND CHICAGO & ROCK Island & Pacific Railroad Company and others.

The seperate answer of the Chicago, Rock Island and Pacific Railroad Company.

Now comes the defendant, and, for answer to the said bill of complaint of said complainants, says that it has no knowledge, information, or belief in relation to the said judgments of said plaintiffs, except as set forth in said petition, and have no knowledge, information, or belief as to the issuing of bonds by The City of Davenport, except as in said bill set forth; that it has no knowledge, information, or belief in relation to the guarantee of said bonds, except as set forth in said petition. It has no knowledge, information, or belief as to the population or value of property in the city of Davenport, in 1866, except as stated in said bill, and admits the same to be true.

It admits that executions were issued on said judgments, and returned "No property," but does not admit that The City of Davenport is insolvent. It admits that The Mississippi and Missouri Railroad issued its bonds and mortgages to secure the same, to the amount of about seven millions of dollars, and admits that it guaranteed bonds of cities and counties to the amount of about three hundred thousand dollars.

It has no knowledge as to the meeting of the bond & stock holders of the Mississippi and Missouri Railroad Company in the city of New York, on the eighteenth of October, 1865, or on the twentieth of October, 1865.

It has no knowledge of a proposition to sell the Mississippi and Missouri Railroad Company to The Chicago and Rock Island Railroad Company, or of any agreement in relation thereto, except as in said bill stated, and therefore cannot deny the same; but this defendant admits nothing as to the power to make said contract, or the effect of the same.

This defendant admits that mortgages on the Mississippi and Missouri Railroad Company were foreclosed, and that this defendant became incorporated under the laws of the State of Iowa, and at the sale of the said railroad & appurtenances and franchises became the
97 purchaser of the same at and for the sum of two millions one hundred thousand dollars.

This defendant admits that Stanton, Wilson, and Elliott were appointed a committee to get up the stock & bonds of the M. & M. Railroad Company, and, in pursuance of such appointment, entered upon the duties of their office, & selected the Union Trust Company of New York City as their agent, to receive the surrender of the stocks & bonds of said M. and M. Railroad Company, and to issue certificates therefor, a copy of which copies are on file as exhibits in this case; that a large

amount of bonds & stock of said railroad company was surrendered, and certificates issued therefor.

This defendant further says that the bonds of this company are to be issued and received by said certificate-holders for their pro-rata share of the proceeds of the purchase of the M. & M. Railroad Company, and they aver that they are ready and willing to deliver the same on surrender of the said certificates.

And this defendant, further answering, says that, by contract between this defendant and the said committee, Stanton, Elliott, & Wilson, this defendant has assumed the performance of the duties of said committee in so far as to receive the surrender of the certificates issued by the Union Trust Company, and to issue to the holders thereof the bonds to which they may be entitled by their said certificates; and defendant further says that a large amount of stock held by individuals in said M. & M. Railroad Company was surrendered by the holders thereof to said committee or their agent, the Union Trust Company, and certificates issued to them for the same; which said certificates are payable to bearer, and therefore negotiable.

Said defendant further says that a large amount of said certificates have been transferred & sold by the original holders thereof, and are now in the hands of third persons other than the original holders, who purchased the same in good faith for a valuable consideration before the commencement of this suit, without any notice of the equities existing between other parties to them, and who now claim that they are entitled to the number of bonds of this company which their several certificates call for, and this defendant says that they are ready and willing to issue & deliver their bonds, but cannot do so on account of the pendency of this suit.

Said certificate-holders, who purchased the same in good faith, & who are not parties to this suit, claim that they are entitled to their bonds, & the plaintiffs in this suit claim, and ask the court so to order, that they may be delivered to them in satisfaction of the judgments—the bonds which were to go to the individual stockholders, to whom these certificates were issued, & who may have sold the same.

This defendant, further answering, says that they do not file this their answer for the purpose of interposing a defense to plaintiffs' petition any further than may be necessary to protect itself in the position which it occupies, & therefore respectfully pray that, in whatever order or decree the court may make in this case, the rights of this defendant may be protected.

JOHN P. COOK,
Sol. for Def'ts.

(Endorsed:) Filed May 16, 1867.

WOODWARD, *Clerk.*

On the same day, the sixteenth day of May, came the plaintiffs,
98 by Grant, their solicitor, and filed in the said clerk's office the replication to the answer of the defendants George W. Stanton, jr., Blakely Wilson, and John Elliott; which replication is in the words and figures following, to wit:

U. S. C. C. for dist. of Iowa.

MARK HOWARD & JOHN WEBER
vs.
THE CITY OF DAVENPORT & ALS. } Equity.

The plaintiff, for reply to the answer of George W. Stanton, jr., John

Elliott, and Blakely Wilson, say that the allegations of the bill and amendments are true, and the allegations of the answer untrue, and this he will aver and prove.

GRANT, *for Pl'ffs.*

(Endorsed:) Filed 16th May, 1867.

W. G. WOODWARD, *Clerk.*
By S. S. ETHRIDGE, *Deputy.*

And on the same day, the sixteenth day of May, came the parties, George W. Stanton, jr., Blakely Wilson, and John Elliott, and The Chicago, Rock Island and Pacific Railroad Company, defendants, by Cook and Drury, their solicitors, and the plaintiffs, by Grant and Smith, their solicitors, and filed in said clerk's office their stipulation; which stipulation is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & JOHN WEBER & ALS.
vs.
THE CITY OF DAVENPORT & OTHERS.

In this cause the defendants George W. Stanton, jr., John Elliott, & Blakely Wilson, & Chicago, Rock Island, & Pacific Railroad Company, have answered by counsel, and not under oath. The jurat to the answer is waived; and as the answer is intended to control the legal conclusions of the bills & manner of stating the facts rather than the facts themselves, most of which are in writing, it is agreed that all the allegations of the bill & amendments not denied by the answer are admitted; and as to those which are denied, that the proof by one witness or by documents or writings which are admitted, shall be sufficient.

And the following documentary proofs are to be admitted on the trial, subject to all legal objections:

1st. The petition, judgments, executions, & returns referred to in the bill & amendments, subject to all legal objections.

2nd. The meeting and proceedings of 18th & 20th Oct., 1865, & the letter of John A. Dix, of which an exhibit is attached to the bill.

3rd. The contracts and lease of the first of November, 1865, which are attached to the bill.

4th. The bonds & c'upons set out in the bill, of which copies are attached to the bill.

5th. The agreement between Stanton, Elliott, & Wilson & the bond & stock holders, which is attached to the bill.

6. Articles of consolidation.

7. Decree of foreclosure.

99 And the same rule as to one witness shall apply on the part of defendants. The Exhibits A, B, C, D, E, Nos. 1, 2, 3, 4, are detached from the bill, answer, & deposition, & are to be treated as proved.

COOK & DRURY,
Att'ys for Stanton & others, Committee.
GRANT & SMITH,
For Plaintiffs.

(Endorsed:) Filed May 16th, 1867.

W. G. WOODWARD, *Clerk.*

On the same day, the sixteenth day of May, A. D. 1867, came the plaintiffs, by Grant and Smith, their solicitors, and filed in said clerk's office, certain papers, severally marked "Exhibit A," "Exhibit B & C," "Exhibit D," "Exhibit No. 1," "Exhibit No. 2," "Exhibit No. 3," "Exhibit No. 4;" which said exhibits are in the words & figures following, to wit:

HOWARD & AL.
v.
DAVENPORT & ALS. } Exhibit A.

Proceedings of a meeting of the bond and stock holders of the Mississippi and Missouri R. R. Co., held October 18th, 1865, and statement of Gen'l John A. Dix.

MISSISSIPPI & MISSOURI RAILROAD COMPANY.

Meeting of bond & stock holders at No. 49 Pine street, New York, October 18th, 1865.

Meeting called to order by General Dix, who nominated Mr. Royal Phelps as chairman.

Mr. Phelps elected & takes the chair. Mr. R. C. Hawkins elected secretary.

General Dix addressed the meeting, making a statement of the affairs of the road. Mr. George T. M. Davis addressed the meeting, and offered the following resolution:

Resolved, That two tellers be appointed by the chair, to whom each person present and participating in the proceedings of this meeting shall report the number & character of the bonds held by himself, & also the number and character of the bonds such person represents by proxy, and the aggregate number of bonds upon which each person is entitled to vote, and also the number of shares of stock each one owns and votes upon by proxy.

Passed. The chair named the tellers in accordance with the requirements of the resolution. Mess. A. F. Aldrich and J. S. Baker appointed.

Mr. Davis offered the following resolution:

Resolved, That each bond of one thousand dollars shall be equal to ten shares of stock, and each bond of five hundred dollars shall be equal to five shares of stock in voting upon any proposition before this meeting;

Which was laid on the table.

Mr. W. W. Phelps makes a statement in connection with Lord and Day—represents $507,000 1st mortgage bonds, 1st division; these bondholders asked to have the road sold out, and are determined to do it at once; will consent to no arrangement which does not recognize their claim in full.

100 The tellers make the following report:

Statement.

Land grants	$2,770,500
2nd mortgage construction	261,000
Oskaloosa division	151,000
1st mortgage, 1st division	120,000
2nd mortgage, 1st division	133,000
	$3,435,500.

Common stock, 11,675 shares.

Mr. P. M. Myers offered the following resolution:

Resolved, 1st. That we recommend a sale of the Mississippi and Missouri Railroad, its lands, equipments, and franchise, to the Chicago & Rock Island Railroad Co. for the sum of five and a half millions of dollars, provided the mode of payment is in every respect satisfactory, and that the arrangement be closed on or before 1st November proximo.

2nd. That a committee be appointed to arrange the mode and terms of payment with The Chicago and Rock Island Railroad Co., and that they are authorized to call a subsequent meeting of the bond and stock holders of the Missssippi and Missouri Railroad, provided they deem it necessary to do so.

3rd. That Messrs. B. Wilson, G. W. Stanton, and John Elliott be appointed said committee.

Plan for the distribution of the proceeds of sale of the Mississippi and Missouri Railroad to Rock Island R. R. Co. at $5,500,000.

If the offer of The Chicago and Rock Island Railroad Co., of $5,500,000, is accepted by The Mississippi & Missouri Railroad Co., there can be paid as follows:

1st mortgage bondholders, eastern division, including income bonds, & also interest up to July 1, 1865, par.

2nd mortgage bondholders, eastern division, 80 per cent. on $400,000.

Oskaloosa division bondholders, including income bonds & scrip, 62½ per cent.

Land-grant bondholders, including income bonds & scrip, 62½ per cent.

2nd mortgage construction bondholders, 30 per cent.

Stock, 16 per cent.

Plan for the distribution of the proceeds of sale of the Mississippi and Missouri R. R. to Rock Island R. R. Co. at $5,500,000.

$1,000,000, 1st division	@ 100,		$1,000,000
214,000, do income	" 100,		214,000
400,000, 2nd, 1st division	" 75,		300,000
590,000, 1st Oskaloosa	" 75,		442,500
3,612,000, 1st land grant, W. div	" 65,		2,347,800
695,000, 2nd mortgage over all	" 50,		417,000
266,000, income on 3d class	" 60,		159,000
84,000, income on Oskaloosa	" 70,		58,800
			$4,939,700
101 1 year's interest on $1,214,000		$84,980	
" " " " 990,000		52,500	
1 " " " 1,045,000		43,890	
1 2/12 " " " 3,612,000		187,824	
			369,194
			$5,378,394

Earnings to January 1st, 1866, & balance, to go to stockholders. Certificates or receipts to be issued by trustees to bear interest from January 1, 1866. Rock Island Company appoints one trustee; Mississippi and Missouri Company appoints one trustee; bondholders appoint one trustee.

Rock Island Company to foreclose at their expense. Earnings of road to go to the Rock Island Co. after first January, 1866.

Mr. Hughes offered the following agreement for the re-organization of the Mississippi and Missouri Railroad Company:

Sell the road under decrée of forecloseure; let it be purchased for the benefit of the creditors and stockholders assenting to this 'greement. Pay the assenting creditors and stockholders with bonds and stock of the new company as follows, viz: For the first mortgage, eastern division, par, in the new company's first mortgage bonds and preferred stock; for all the interest accumulated up to the time of issuing the new securities in preferred stock. Stockholders surrendering their stock in the old company, to receive 50 per cent. in the new company's common stock.

See comparative statement of securities below:

	Old bonds.	New bonds.
First mortgage, eastern division	$1,000,000	$1,000,000
Second " " "	400,000	200,000
Oskaloosa division	590,000	295,000
First mortgage land grant	3,612,000	1,806,000
Second " " "	695,000	347,500
Income bonds	560,000	280,000
Total	$6,857,000	$3,928,500
First mortgage bonds reserved for the completion of the road to Des Moines, 41 miles, & for additional rolling stock		$1,571,500
Total amount of new mortgage covering road & land grant		$5,500,000
Preferred stock of new company		3,500,000
		$9,000,000
Common stock of new company		3,000,000
		$12,000,000

Length of road to Des Moines 227 miles, including Oskaloosa branch. Land grant, 650,000 acres.

JOHN P. YELVERTON,
Pres't of Bank North America,
FREDERICK P. JAMES, 45 *Wall street,*
DAVID M. HUGHES, 125 *William street,*
Trustees for Assenting Creditors.

NEW YORK, *June 1st*, 1865.

102 I hereby assent to the above agreement, and agree to surrender bonds and shares stock, and to receive the said trustees' certificates for the same.

Parties in interest, who have not yet assented to this agreement, can do so at any time previous to August 1st, 1865.

Office of trustees, 25 William street, room No. 9.

Time of assent extended to October 1st, 1865.

Mr. Wilson offered the following:

NEW YORK, *August 5*, 1865.

The accompanying plan of re-organization of the Mississippi and Missouri Railroad Company has been approved by the executive committee of the board of directors, and is now submitted to the consideration of the bond and stock holders.

If adopted by them, and fully carried out, it will place the company on a very strong baisis, and it leaves a debt of only $3,000,000, first mortgage bonds, with an annual interest charge of $210,000, or something less than the net earnings of the road last year, which will be largely increased by its completion to Des Moines, for which and its proper equipment this plan fully provides. The appropriation of the earnings, or so much thereof as may be necessary to that purpose, will enable the company to meet the future payments of interest with undeviating regularity and promptness.

It is very important, in the re-organization of the company, to provide not only for the completion of the road Des Moines, but also, as far as practicable, for its further extension towards Council Bluffs, at which point it will connect with the Union Pacific Railroad. This plan will leave applicable to that purpose, first mortgage bonds and preferred stock to the amount of $1,700,000, as is shown by the accompanying statements.

At an average of less than $10 per acre, the land grant, which, on completion of the road to Des Moines, will probably amount to 650,000 acres, will ultimately extinguish the preferred stock, and the total capital of the company will then stand as follows:

First mortgage bonds	$3,000,000
Common stock	3,500,000
	$6,500,000

and the latter undoubtedly prove one of the most productive railroad investments in the country.

Statement.

New first mortgage bonds		$3,000,000
Less first mortgage, eastern division	$1,000,000	
Income bonds issued for funded c'upons	214,000	
Arrears of interest & c'upons due 1st January, 1866	84,980	
		$1,298,980
		$1,701,020
New preferred stock		$6,000,000
Second mortgage, eastern division	$400,000	
First mortgage land grant	3,612,000	
103 50 per cent. second mortgage land grant, $695,000	347,500	
50 per cent. income bonds, 266,000	133,000	
10 per cent. cash payment on common stock	297,180	
		4,789,680
Unappropriated balance		$1,210,320
New common stock		$3,500,000
Old stock	$2,971,800	
50 per cent. second mortgage land grant	347,500	
50 per cent, income bonds	133,000	
		3,452,300
		$47,700

New bonds and stock applicable to extension of road.

First mortgage bonds	$1,701,020
Preferred stock	1,210,320
Cash payment on common stock	297,180
	$3,208,520
Estimated cost of completion to Des Moines, and equipment	1,500,000
Balance applicable to road west of Des Moines	$1,708,500

Plan of organization.

Sell the road under foreclosure of the first or second eastern division, and first land-grant mortgages. Let it be purchased for account of the assenting bond & stock holders, and a new company organized by them with the following stock & bonds:

$3,000,000 7 per cent. bonds redeemable in years from date of issue, interest payable semi-annualy in the city of New York, secured by mortgage on main line from Davenport to Des Moines, and branch from Davenport to Muscatine.

$6,000,000 preferred stock, secured by land grant, the proceeds of sales thereof to be applied to its extinguishment by purchase in the market, with the right to the company of calling it in from the holders at 110 per cent.

$3,500,000 common stock.

$12,500,000

The preferred stock to be entitled to dividends of seven per cent., in each and every year after the completion & equipment of the road to Des Moines, to be paid in full, out of the earnings, before any part thereof can be applied to dividends of the common stock.

The net earnings of the road to be applied as follows:

1st. To interest on bonds.

2nd. To dividends of 7 per cent. per annum on preferred stock.

3rd. To dividends of seven per cent. per annum, if earned in the year on common stock.

4th. Any surplus to be divided pro rata between the two classes of stockholders, or appropriated to construction of road from Des Moines to Council Bluffs.

104 No second mortgage to be put on the road east of Des Moines, without the consent of the holders of two-thirds of the preferred stock.

Issue to the parties to this agreement, in exchange for their bonds and stock of the old company, those of then new, as follows:

For first mortgage, eastern division, new first mortgage bonds for principal & interest to 1st of January, 1866, including income bonds issued for old c'upons funded.

For second mortgage, eastern division, and first mortgage land-grant preferred stock for the principal of the bonds.

For second mortgage land-grant & income bonds, preferred stock for 50 per cent. of the principal of the bonds, and common stock for balance.

For stock of old company, share for share of new stock on payment of ten per cent. in cash, for which issue preferred stock.

Mr. Bogart moved that the whole matter of re-organization & sale of the Mississippi and Missouri Railroad be laid on the table, and that the scales of division of purchase-monies offered by the Rock Island Railroad be printed for distribution among the stockholders & bondholders.

Passed.

Mr. Perkins offered the following resolution:

Resolved, That the executive committee of the Mississippi and Missouri Railroad be requested to submit a report, at the next meeting, as to the advisability of selling the railroad.

Passed.

Meeting adjourned to Oct. 20th, 1865, at one o'clock p. m., at same place.

OCTOBER, 20*th*, 1865.

Meeting held pursuant to adjournment—Mr. Royal Phelps in the chair Mr. R. C. Hawkins, sec., present.

The secretary read the minutes of the last meeting, which were approved.

The executive committee report in accordance with the resolution of Mr. Perkins.

Report.

In accordance with the request contained in the resolution adopted on the 18th inst., at the meeting of the bond & stock holders of the Mississippi & Missouri Railroad Company, the executive committee of said company, after the fullest consideration that they can give to the subject, have arrived at the conclusion that a sale of the road to the Chicago and Rock Island Railroad Company, at five millions five hundred thousand dollars, is advisable, unless at least one million five hundred thousand dollars can be immediately provided by the bond & stock holders for the completion and equipment of the road to Des Moines, a distance of about forty-two (42) miles.

The executive committee, however, base their recommendation of the sale upon the condition that the distribution of the $5,500,000 is made in accordance with the scale hereto attached.

JNO. A. DIX, *Pres't*,
G. W. STANTON,
B. WILSON,
JOHN ELLIOTT,
GEO. T. M. DAVIS,
Executive Committee.

105	1st mortgage, eastern division	$1,000,000	
	Income bonds	214,000	
	Interest July 1st, 1865	42,490	
			$1,256,490
	2nd mortgage, eastern division, $400,000, @ 80c		230,000
	Oskaloosa division bonds.....	$590,000	
	Income do.	73,000	
	Ditto scrip	2,939	
		$665,939, @ 62½c.	416,212

Land-grant division bonds	$3,612,000		
Income do.	253,000		
Do. scrip	12,550		
	$3,878,550	@ 70 c.	2,714,635
2nd mortage construction bonds	691,000		
Scrip	2,764		
	693,764	@ 30 c.	208,129
Capital stock	$3,452,500	@ 16 c.	552,400
			$5,467,866

After which, Mr. Davis addressed the meeting advocating the passage of the report, making a full and clear exposition of the condition of the road.

Mr. P. M. Myers offered the following resolution:

Resolved, That the report of the executive committee be accepted & the recommendation adopted.

Mr. Bogart offered the following resolution:

Resolved, That the report of the executive committee be accepted.

Passed.

Mr. E. H. Mead offered the following amendment:

Plan for the distribution of the proceeds of sale of the Mississippi & Missouri R. R. to Rock Island R. R. Co. at $5,500,000.

$1,000,000, 1st division	at 100	$1,000,000
214,000, do. income	" 100	214,000
400,000, 2nd, 1st division	" 75	300,000
590,000, 1st Oskaloosa	" 55	324,500
3,612,000, 1st land-grant, W. div	" 75	2,709,000
695,000, 2nd mortgage over all	" 30	208,500
266,000, income on 3d class	" 75	199,500
84,000, income on Oskaloosa	" 55	46,200
		$5,001,700
1 year's interest on $1,214,000		84,980
		$5,086,680

Earnings to January first, 1866, and balance, to go to stockholders. Certificates or receipts, to be used by trustees, to bear interest from January first, 1866. Rock Island co. appoints one trustee; Mississippi & Missouri co. appoints one trustee; bondholders appoint one
106 trustee. Rock Island co. to foreclose at their expense. Earnings of road to go to Rock Island co. after first of January, 1866.

Not passed; voted down.

Mr. Wadsworth offered the following amendment:

Plan for the distribution of the proceeds of sale of the Mississippi & Missouri R. R. to Rock Island R. R. Co. at 5,500,000.

$1,000,000, 1st division	at	100	$,100,000
214,000, do. income	"	100	214,000
400,000, 2nd, 1st division	"	75	300,000
590,000, 1st Oskaloosa	"	75	442,500
3,612,000, 1st land grant, W. div	"	65	2,347,800
695,000, 2nd mortgage over all	"	60	486,500
266,000, income on 3d class	"	60	159,600
84,000, income on Oskaloosa	"	70	58,800
			5,009,200
1 year's interest on $1,214,000		$84,980	
" " " " 990,000		52,500	
" " " " 1,045,000		43,890	
$1\frac{2}{12}$ " " " 3,612,000		187,824	
			369,194
			$5,378,394

Earnings to January first, 1866, & balance, to go to stockholders. Certificates or receipts to be issued by trustees, to bear interest from January 1, 1866. Rock Island co. appoints one trustee; Mississippi & Missouri co. appoints one trustee; bondholders appoint one trustee. Rock Island co. to foreclose at their expense. Earnings of road to go to Rock Island co. after the 1st January, 1866.

Not passed, voted down.

Mr. P. M. Myers offered the following resolution:

Resolved, That the recommendation of the executive committee be adopted.

Passed.

Judge Emott offered the following resolution:

Resolved, That a committee be appointed to arrange the mode and terms of payment with the Chicago & Rock Island Railroad Company, and the details of the sale authorized by this meeting; that Messrs. B. Wilson, G. W. Stanton, and John Elliott be appointed such committee; and that said committee be instructed to make an arrangement with some trust company, to receive the bonds and stock of the parties as senting, and issue certificates therefor, setting forth what the holder thereof is entitled to receive.

Passed.

The sale & the distribution of the proceeds recom'ended by the committee having been approved, General Dix said that he had prepared a statement, showing the circumstances which had induced him to acquiesce in the course which had been adopted, and which he believed to be a matter of necessity. He had taken no part in the plan of distributing the proceeds of the sale, having been willing to leave the matter to the committee, who, he believed, had acted disinterestedly, equitably, and fairly. He was himself, perhaps, as great a sufferer, in proportion to his interest in the securities of the company, as any gentleman present, as he was not only a stockholder & bondholder, but he had considerable amount of repudiated county and city
107 bonds. He would not delay the close of the proceedings by reading the statement, but proposed to publish & distribute it for the information of the bondholders & stockholders.

Mr. Henry Day offered the following resolution:

Resolved, That Gen. Dix be requested to print his statement.

Passed.

Mr. John Elliott offered the following resolution:

Resolved, That the proceedings at the meetings be printed & added to General Dix's statement.

Passed.

Adjourned sine die.

NEW YORK, *October* 20, 1865.

To the stockholders & bondholders of the Mississippi & Missouri Railroad Company.

GENTLEMEN: The executive committee of the company, in pursuance of your resolution of the eighteenth instant, asking their opinion in regard to the sale of the property and franchises of the company to the Chicago & Rock Island Railroad Company for the sum of five million five hundred thousand dollars, having reported in favor of the measure, the undersigned deems it his duty, having been president of the former company from its organization, to state the reasons which have induced him to concur in their report.

The company received from the contractors, and commenced operating on the first of July, 1856, sixty-seven miles of road—fifty-five from Davenport, the eastern terminus on the Mississippi River, to Iowa City, and a branch of twelve miles to Muscatine. It was a season of great commercial activity, and the earnings of the first six months amounted to $184,193 82. Out of these, the company, after defraying the operating expenses, amounting to forty per cent, paid the interest on its bonds, and a dividend of four per cent on its stock. The next six months were less productive, and the earnings for the year ending 30th June, 1857, including the above-mentioned six months, were only $299,839 25. The commercial revulsions of 1857 followed; and the earnings for the year ending 30th June, 1858, fell to $172,351 72. On the first January, 1859, the company opened forty miles of road on the Oskaloosa line, from Muscatine to Washington; but notwithstanding this addition, the earnings again fell off to 172,197 37 for the year ending the 30th June, 1859. The bonded debt by the construction of these forty miles of road was increased by the sum of $590,000; and although the gross earnings for the year ending June 30th, 1860, were $207,688 97, the net earnings for the year were only $97,889 45, while the annual interest on the bonded debt was $145,300. The earnings for the six months ending the 31st December, 1860, were $127,045 51; the earnings for the year ending the 31st December, 1861, were $232,784 19; and the nett earnings $93,798 90; while the annual interest on the bonded debt of the company was constantly increasing by the issuing of land-grant bonds for the construction of the road on the main line westward from Iowa City to Grinnell.

Under these circumstances, the company was compelled to suspend the payment of the interest on its bonds; and in October, 1862, an arrangement was made with the bondholders to fund their c'upons to the first July, 1864.

The earnings for the subsequent years are as follows:

	For 1862	$270,527 19
108	" 1863	348,618 34
	" 1864	603,209 32
	" 1865, (nine months)	527,884 03

Heretofore the cost of operating the road since the first year has varied but little—but sixty per cent. of the earnings. During the present year it has equallied sixty-five per cent., and there is no hope of reducing this ratio for some time to come.

The road has now been nearly ten years in operation; bridges are to be rebuilt, and ties and iron to some extent to be replaced.

In the construction of the road a very heavy bonded debt has been created.

The company was required, in order to save its land grant, to complete its road within a limited time; and it was compelled to dispose of its land-grant bonds, its only resource for raising money, at 60 per cent. of their par value; thus adding enormously to the aggregate of its debt, and making the cost of the road west of Iowa City forty per cent. more than it would have been if the bonds could have been disposed of at par.

The undersigned regrets to state that the credit of the company and its ability to raise money were greatly impaired by the conduct of certain counties and cities in Iowa, which had, after being authorized by a popular vote, taken stock, and issued their bonds in payment of these subscriptions. The bonds, amounting to more than a million dollars, were for the most part guaranteed by the company, and were sold in the Atlantic States. After the portions of road, for the construction of which they were issued, were completed (and in some instances before,) they were all repudiated; and the company not having the means of paying the interest on its own bonds, was, by the default of these counties and cities, involved in the further discredit of failing to fulfil its guaranty of theirs. Thus, the municipal corporations referred to, after having invited capital into the State by the offer of their credit, after getting the railroad, by means of which their property has been greatly increased in value, have not scrupled to violate their engagements, equally binding on them in honor and good faith, and *have*, by discrediting the company whose guaranty they accepted to secure the sale of their bonds, have been among the principal authors of the obstacles it has encountered, and the embarrassments in which it is now involved, and also the chief impediment to the further improvement of their own section of the country.

The bonded debt of the company is now $6,851,754 64, and the annual interest $483,680. There is also due on account of unpaid c'upons the sum of $293,497 30. The earnings of the current year will probably exceed $760,000; but the expense of the road will be so heavy there is likely to be a de*f*iciency of $200,000 in the nett earnings for the payment of the annual interest, making more than half a million of unpaid c'upons to be provided for on the first of January next. It is obvious that this de*f*iciency cannot be met by any financial recourses which the company can command. It is therefore driven to the ne*c*essity of selling the road, or reorganizing on a basis which will furnish the means of constructing forty miles of road, and of extending it to Des Moines, the capitol of of Iowa, and deferring to a future time the payment of existing liabilities. A re-organization involves the necessity of foreclosing one or more of the mortgages on the road, of raising a sum of at least of a million and a half of dollars, and of incurring both expense & delay; and it is in view of all these embarrassments, that the undersigned concurs
109 with all the other members of the executive committee, in recommending the sale to the Chicago and Rock Island Railroad Company. He is satisfied that the sum offered ($5,500,000) is less than the actual value of the road to the purchaser; but he is by no means as well

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The company was required, in order to save its land grant, to complete its road within a limited time; and it was compelled to dispose of its land-grant bonds, its only resource for raising money, at 60 per cent. of their par value; thus adding enormously to the aggregate of its debt, and making the cost of the road west of Iowa City forty per cent. more than it would have been if the bonds could have been disposed of at par.

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109 with all the other members of the executive committee, in recommending the sale to the Chicago and Rock Island Railroad Company. He is satisfied that the sum offered ($5,500,000) is less than the actual value of the road to the purchaser; but he is by no means as well

satisfied that it is worth more under existing embarrassments, to the seller. It is beyond question, in connection with the Union Pacific Railroad Company, destined to become one of the most valuable & productive railway lines in the United States; and nothing but absolute necessity would justify the proposed sale. But the company is in the unfortunate condition of an individual having a valuable property which he has not the means of developing, and the full productiveness of which can only be secured by the expenditure of a larger sum of money than he can command.

The executive committee name the sum of a million and a half of dollars as necessary to extend the road to Des Moines, & equip it. But to complete their extension of the road, to equip the whole road as it should be, and put it in proper order, will require at least two millions. It has now but 13 locomotives, 9 passengers cars, 92 freight cars, and 50 platform cars on the entire road of 184 miles. To construct and equip the road to Des Moines, (41 miles,) supply defficiencies in the present equipments, and put the road in condition to be economically operated, the following is believed to be a fair estimate. A more detailed estimate would no doubt be greater in amount.

Extension to Des Moines, 41 miles	$1,250,000
Rebuilding bridges, reducing two heavy grades, replacing iron & ties worn out	400,000
Additional indispensable equipments.....	500,000
	$2,150,000

If this amount could be provided, and the road continued to Des Moines, the earnings would, in all probability, be doubled, while the interest on the bonded debt, even if the money could be obtained at par, would be increased to about $650,000. The company has no securities to offer for raising money, except $3,388,000 of bonds, which may be issued under the land-grant mortgage; but these, at present prices, would yield less than a million and a half of dollars, while the bonded debt would be increased by thus sacrificing them, to more than ten millions. In such an increase, it is difficult to foresee any result but an insolvency still more disastrous to all concerned.

Although the company has 480,000 acres of valuable land, at least three-fourths of the whole amount lie more than forty miles west of Des Moines, and more than eighty miles west of the present terminus of the road in Jasper County. These lands are now wholly unavailable. They cannot be fully brought into profitable use until the company has constructed from 100 to 150 miles more of road, at an expense of four or five millions of dollars. It is the manifest hopelessness of obtaining so large an amount of money, and the improbability even of raising a sufficient amount to extend the road to Des Moines, that have reconciled the undersigned to the painful alternative of selling.

If the stock and bond holders could advance a million and a half of dollars to extend the road to Des Moines, it is not doubted that their interests would be better secured than by a sale. But it is very questionable whether such a measure could be carried out. The first mortgage bondholders on the eastern division are a'king for the in-
110 terest due them, and are indeed preparing to bring a suit to foreclose*ure*; and if they were quieted by payment, it is not unlikely that the holders of other bonds would be equally impatient, and adopt legal remedies to enforce their claims.

By the proposed sale, the stockholders will be the greatest sufferers;

but a foreclosure by the bondholders would cut them off entirely, and their only chance of realizing anything on their stock seems to be in the proposed sale and the plan recommended by the executive committee for distributing the proceeds, which will give them sixteen per cent. The undersigned is himself a holder of stock, for which he paid 80 per cent. to the company, when it was constructing the first division, & he is, therefore, not likely to underrate the sacrifice which other stockholders are asked to make.

In conclusion, the undersigned can, from his long connection with the affairs of the company, confidently assert that the embarrassments in which it is involved, have not been brought in by extravagance or mismanagement, but by the low price at which its bonds have been negotiated, the inadequacy of the earnings of the road to meet its annual liabilities during many consecutive years of commercial depression, & other causes, which have contributed to impair its credit.

Respectfully,

JOHN A. DIX.

(Endorsed:) Ex'ibit A, 69, Eq.
Filed 16 May, '67.

W. G. WOODWARD, *Clerk.*

HOWARD & ALS. *v.* DAVENPORT & ALS. } Exhibits B & C.

Memorandum of understanding had and agreement made, this first day of November, one thousand eight hundred and sixty-five, between the Mississippi & Missouri Railroad Company and the Chicago & Rock Island Railroad Company, in pursuance of certain resolutions passed by a meeting of the bondholders & stockholders of the Mississippi & Missouri Railroad Company, held in the city of New York, on the twentieth day of October, 1865.

ARTICLE I. The Mississippi and Missouri Railroad Company will take proper steps, with all possible dispatch, to cause the mortgages upon its line of road, its lands, depot, equipments, &c., &c., to be foreclosed, and its entire property, real and personal, sold, so that the purchaser shall be able to transfer a perfect and unincumbered title to such incorporated company in Iowa as the Chicago & Rock Island Railroad Company may designate to become the purchaser and owner thereof.

ARTICLE II. The Chicago and Rock Island Railroad Company will, within one year from December 1st, 1865, and as much earlier as the property aforesaid, if so sold and purchased, cause to be incorporated a company in the State of Iowa, under the general law of said State, which shall purchase the said property for the sum of five millions five hundred thousand dollars, and complete the said road to Des Moines; and the Mississippi and Missouri Railroad Company agree that the person or persons who shall become the purchaser or purchasers under the foreclosures aforesaid shall sell the said property to such company or corporation for the sum and upon the terms herein stated and set forth.

111 ARTICLE III. The Chicago and Rock Island Railroad Company will use all possible exertion to procure the necessary power and authority, legislative and otherwise, to consolidate the said Chicago and Rock Island Railroad Company, and the said company, so to be incor-

porated in Iowa, so as to make one company, whose line of road, under some other name, shall extend from Chicago to Des Moines, & include the branch of the Mississippi & Missouri Railroad to Washington, which is now called "the Oskaloosa branch."

ARTICLE IV. If the consolidation aforesaid can be perfected, then the Chicago and Rock Island Railroad Company agrees that said consolidated company can issue bonds in sums of one thousand dollars and five hundred dollars, to the amount of nine million' dollars, payable in twenty-five years from date, in the city of New York, bearing interest at seven per cent. per annum, payable half-yearly in said city, and shall secure the payment thereof by a mortgage upon all the railroads, franchises, depots, station grounds, and equipments of said consolidated company from Chicago to Des Moines and the Oskaloosa branch, and shall create a sinking fund sufficient to retire the bonds at maturity. Of this sum there shall be paid in the bonds aforesaid—

For the purchase of the property of the Mississippi and Missouri Railroad Company	$5,500,000
To complete the road to Des Moines	1,500,000
To pay off the present mortgage on the Chicago & Rock Island Railroad	1,400,000
To pay off the bonds of the Mississippi River Bridge	600,000
	$9,000,000

ARTICLE V. If, from any cause, the consolidation provided for cannot be made & perfected, then the *the* understanding and agreement is that the said company provided for in Article II, upon the purchase of the property aforesaid of the Mississippi and Missouri Railroad Company, shall issue its bonds in sums of one thousand dollars and five hundred dollars, interest and principal payable as provided in Article IV, to the amount of seven million' dollars, secured by a mortgage upon the entire road and its franchises, from Davenport to Des Moines, and upon the Oskaloosa branch, the depot grounds, station buildings, equipments, & all the lands which said company may acquire by the purchase aforesaid; and the Chicago and Rock Island Railroad Company agrees that it will guarantee the payment of the interest and principal of the said seven millions dollars of bonds so to be issued, five millions five hundred thousand dollars, for the purchase of the property of the Mississippi & Missouri Railroad Company, and one million five hundred thousand dollars for the completion of the road to Des Moines.

ARTICLE VI. It is agreed that the Chicago & Rock Island Railroad Company shall have the po'session of and operate the Mississippi and Missouri Railroad from and after the first day of December, 1865, as provided for in another agreement bearing even date with this, and that the interest upon the said sum of five millions five hundred thousand dollars shall commence on said first day of December, 1865, which interest shall be paid in cash at the time of the transfer of the property aforesaid shall be made to the company, as provided for in Article II.

ARTICLE VII. It is agreed and understood that, unless The Mississippi & Missouri Railroad Company have procured the foreclosure & sale aforesaid by the first day of December, 1866, this agreement shall be null and void, unless the Chicago & Rock Island Railroad Company shall agree to extend the time for such sale to be had and procured.

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In witness whereof these presents are signed by the president of each road this first day of November, one thousand eight hundred and sixty-five.

JOHN A. DIX,
President Miss. & Mo. R. R. Co.
C. W. DURANT,
President Chicago & R. I. R. R. Co.

Memorandum of an agreement made this first day of November, A. D. one thousand eight hundred & sixty-five, between The Mississippi and Missouri Railroad Company, of the first part, and The Chicago and Rock Island Company, of the second part.

The party of the first part covenants & agrees with the party of the second part to yield to the said Chicago & Rock Island Railroad Company the pos'session, control, & management of the Mississippi & Missouri Railroad, the Oskaloosa, and all other branches, its and their depots, shops, offices, or equipments, from the first day of December, A D. one thousand eight hundred and sixty-five, to the first day of December, A. D. one thousand eight hundred and sixty-six, upon the terms and conditions hereinafter contained. And The Chicago and Rock Island Railroad Company agrees to accept the said Mississippi & Missouri Railroad, with the Oskaloosa and other branches as aforesaid, as the agent and attorney-in-fact of the said Mississippi & Missouri Railroad Company, and, as such agent or attorney, to operate & manage the said road, with the right, privile*d*ge, and understanding that The Chicago and Rock Island Railroad Company may and shall employ and appropriate, to the preservation and repair of the said Mississippi and Missouri Railroad, its tracks, bridges, buildings, etc., that sum taken from the earnings of the last-mentioned road, which, in the opinion of the superintend*a*nt of the Chicago and Rock Island Railroad Company, is ne*e*ssary and proper. The Chicago & Rock Island Company further covenants to operate the Mississippi and Missouri Railroad property, and to keep books of account showing all the receipts and expenditures connected with the same, which books shall be open to the inspection of any or all officers of the Mississippi & Missouri Railroad Company. It is also understood and mutually agreed that if, from any cause, an agreement made between the parties to these presents of the same date, in relation to the foreclose*u*re of the mortgages, and a subsequent sale of the Mississippi and Missouri Railroad should fail to be carried out, then, and in that case, The Chicago and Rock Island Railroad Company will restore the pos'ession and control of the Mississippi and Missouri Railroad to the company of that name, or the party lawfully entitled thereto, and will account for and pay over all moneys in its hands, or the hands of its servants, that shall have been received from the earnings of the Mississippi and Missouri Railroad, and not already, at the date of such restoration, thereon expended.

And by these presents, The Mississippi and Missouri Railroad Company doth hereby constitute The Chicago & Rock Island Railroad Company its lawful attorney, to operate and manage the Mississippi and Missouri Railroad from the first day of December, A. D. one thousand eight hundred and sixty-five, to the first day of December, A. D. one thousand eight hundred and sixty-six, hereby ratifying & con-
113 firming everything that the said Chicago and Rock Island Railroad Company may or shall lawfully do under these presents.

In witness whereof, each party to this agreement hath caused its

corporate seal to be attached to these presents, and attested by its secretary the day and year first above written.

EBENEZER COOK,
Secretary M. & M. R. R. Co.
F. H. TOWS,
Secretary C. & R. I. R. R. Co.

(Endorsed:) Exhibits of contracts Miss. & Mo. R. R. Co. with Ch. & R. I. R. R. Co.—B & C.

Filed 16 May, '67.

W. G. WOODWARD, *Clerk.*

Agreement between stockholders & bondholders of the Mississippi and Missouri Railroad Company and George W. Stanton, jr., John Elliott, and Blakely Wilson, committee.

Agreement made between Peter M. Myers and others, subscribing holders of the stock and bonds of the Mississippi and Missouri Railroad Company, of the first part, and George W. Stanton, junior, John Elliott, and Blakely Wilson, their committee, of the second part.

Whereas, at a meeting held in the city of New York, on the 20th day of October, one thousand eight hundred and sixty-five, by the said holders of the stock and bonds of the Mississippi and Missouri Railroad Company, the parties of the second part were named a committee for all parties in interest, and instructed to sell the said railroad, its franchises, and equipment, for five millions five hundred thousand dollars, and to distribute the proceeds of such sale in the amounts and according to a scale of apportionment hereinafter set forth;

And whereas, in the furtherance of this object an agreement was made between the Chicago and Rock Island Railroad Company and the Mississippi and Missouri Railroad Company, dated the first day of November, one thousand eight hundred & sixty-five, whereby the last-mentioned company agreed to sell and transfer its road, lands, and other property free and clear of all incumbrance;

And whereas the said committee, to effectuate this clearance and sale, are about to foreclose the various mortgages in order subsequently to convey a clear title to the purchaser or purchasers thereof:

Now this agreement witnesseth, that the holders of stock and bonds whose names are hereunto subscribed hereby under their hands ratify and confirm the authority given to the said committee at the meeting aforesaid, and agree to hold them, the said committee, free and harmless from any personal liability or responsibility other than the responsibility to act fairly, honestly, or in good faith in the discharge of their trust. The said stockholders and bondholders jointly and severally consent to the foreclosure of any & all the mortgages made by the Mississippi and Missouri Railroad Company, to the sale of the road, franchise, lands, &c., &c., under such foreclosure, and agree to surrender their bonds and certificates of stock, upon signing these presents, into the hands of the Union Trust Company of New York, to be held by the said trust company as the agent of the said committee, and to be used as the said committee shall see fit in carrying out the sale and foreclosure aforesaid, with the proviso only that in case the said
114 proceedings to foreclose shall fail of success, or the sale to be consum'ated, the said bonds and certificates of stock shall be re-

stored to the subscribing holders or those who through them have become entitled to them.

And the committee aforesaid hereby covenant and agree to use all diligence in foreclosing the mortgages now encumbering the title of the Mississippi and Missouri Railroad Company to its property; to convey the same after such foreclosure, as more fully set forth in the agreement between The Chicago and Rock Island Railroad Company and The Mississippi and Missouri Railroad Company, hereinbefore referred to, for five millions five hundred thousand dollars, and to distribute the same among the holders of stock and bonds according to the fol'owing scale, viz: To the holders of bonds secured by the first mortgage of the eastern division of the Mississippi & Missouri Railroad, par, for principal debt and income bonds and interest accrued to July 1, 1865; to the holders of bonds secured by a second mortgage of the last-mentioned division, eighty per cent. of the principal debt; to the holders of bonds secured by a mortgage on the Oskaloosa division and income bonds and scrip, sixty-two and a half per cent. of principal debt; to the holders of bonds secured by what is known as the land-grant first mortgage income bonds and scrip outstanding, seventy per cent. of the principal debt; to the holders of bonds secured by the second construction mortgage so called and scrip, thirty per cent. of the principal debt; and to the holders of stock, sixteen per cent. of the par value of their shar's; and to distribute the balance of purchase-money and the interest thereon at seven per cent., from December 1st, 1865, if any remain after discharging the expenses of foreclosure and sale, among the holders of stock and bonds, according to the scale of apportionment hereinabove mentioned; the said committee agreeing to distribute among the said holders of stock and bonds the proceeds of the sale in the form in which proceeds are received, and to receive such proceeds only in the form of money or bonds secured by a mortgage on the consolidated properties of the Chicago and Rock Island Railroad Company, and the Mississippi and Missouri Railroad Company, or of bonds secured by a mortgage on the property of the Mississippi and Missouri Railroad Company and guaranteed by the Chicago and Rock Island Railroad Company.

And the said committee further agree to receive through the Union Trust Company the bonds, scrip, and certificates of stock held by the parties assenting to this agreement, to deposit the same for safe-keeping in the said Union Trust Company of New York, and to issue through it a proper receipt, which shall entitle the bearer to the rights of such bonds or stock in the fund to be distributed under the terms and conditions hereinbefore mentioned.

Witness the hands of the said Stanton, Wilson, and Elliott, committee, and of Peter M. Myers, and the other holders of stock and bonds assenting hereto.

(Endorsed:) Exhibit D.

Filed 16 May, '67.

W. G. WOODWARD, *Clerk.*

(In pencil:) (Ex. No. one cannot be found.)

NEW YORK, , 186 .

No. .

The Union Trust Company of New York acknowledges the

115 receipt from , of certificate No. , showing that the said is entitled to shares of the capital stock of the Mississippi and Missouri Railroad Company, amounting to dollars principal. To be held subject to an agreement made by the said , and other holders of the stock and bonds of the said railroad company, with George W. Stanton, jr., John Elliott, and Blakely Wilson, their committee, dated November 1, 1865.

This receipt entitles the bearer to dollars in the new bonds to be issued, and interest thereon at the rate of seven per cent. per annum from December 1, 1865, less the excess, if any, of the cost of foreclosure, sale, & other expenses of the committee over and above the $32,134 unappropriated balance of $5,500,000 derived from the sale of said road, and any and all the rights of the said , under and by virtue of the agreement aforesaid.

Dated November 1, 1865.

, *President.*

, *Secretary.*

(Stub.)

Receipt No. entitles , or bearer, to , in the new bonds to be issued in exchange for shares of stock, amounting to $. No. of certificate,

Received the receipt above described , 1865.

(Endorsed on receipt:)

It is agreed to sell the Mississippi and Missouri Railroad, its franchise, land, &c., &c., when title is perfected, for $5,500,000, to be distributed as follows:

First mortgage eastern division bonds	$1,000,000			
Income bonds do. do. do.	214,000			
Interest to July 1, 1865	42,490	at 100	per cent.,	$1,256,490
Second mortgage eastern division	400,000	@ 80	" "	320,000
Mortgage bonds Oskaloosa division	590,000			
Income do. do do.	73,000			
Scrip convertible into bonds	2,939	at 62½	per cent.,	416,212
First mortgage land-grant bonds	3,612,000			
Income do do. do.	253,500			
Scrip convertible into bonds	12,550	at 70	per cent.,	2,714,635
Second mortgage construction bonds	691,000			
Scrip convertible into bonds	2,764	at 30	per cent.,	208,129
Capital stock	3,452,000	@ 16	"	552,400
				$5,467,866
Reserved for pro-rata distribution after deducting expense of foreclosure, sale, &c.				32,134
				$5,500,000

Exhibit No. 2. Howard & als vs. Davenport and als.
Filed 16th May, '67.

W. G. WOODWARD, *Clerk.*

116 Articles of consolidation made and entered into the twentieth day of August, one thousand eight hundred and sixty-six, by and between The Chicago and Rock Island Railroad Company of the first part, and The Chicago, Rock Island and Pacific Railroad Company of the second part.

Whereas the said parties of the first part are a railroad company organized and made a body corporate and politic under and by virtue of the laws of the State of Illinois, and the said parties of the second part are a railroad company organized and made a body corporate & politic under and by virtue of the laws of the State of Iowa;

And whereas the parties of the first part and second parts have mutually agreed, and do mutually agree, to consolidate their property and stock with each other, and to merge and consolidate their respective companies with each other, upon the terms and conditions hereinafter stated, declared, and contained, and are authorized by the laws of the States of Illinois & Iowa so to do;

And whereas all the proceedings for the purpose of such consolidation have been and are fixed and regulated by the by-laws of the said two respective companies; and these present articles are framed & executed in pursuance of and in conformity to such by-laws; and whereas the terms of such consolidation have been approved by the written consent of a majority of the stockholders in interest of each of the said two above-named companies, and the said written consents have been filed in the offices of the said respective companies; and whereas the written consent of all the stockholders of the said Chicago and Rock Island Railroad Company and of the said Chicago, Rock Island and Pacific Railroad Company residing in the State of Illinois, to such consolidation has been obtained and filed in the respective offices of the said last-mentioned companies; and whereas more than three-fourths of all the stockholders in amount of the said Chicago, Rock Island & Pacific Railroad Company have given their written consent to such consolidation, and said last-mentioned consents have been filed in the office of the said last-mentioned company:

Now, these presents witness: That the said parties of the first and second parts, in consideration of the mutual execution of these presents, do hereby merge and consolidate the stock of their respective companies and make one joint-stock company of the said two respective railroads, and do hereby consolidate their respective stock and property, and also their respective companies with each other, and do hereby unite their said two respective corporations, & constitute them into one consolidated corporation, to be called and known by the corporate name of the Chicago, Rock Island and Pacific Railroad Company; and the said parties of the first and second parts, for the consideration aforesaid, do mutually grant, agree, and declare that the name of the said consolidated company by these presents formed is, and shall be, the Chicago, Rock Island and Pacific Railroad Company, by which name the same shall be a body corporate & politic, have a common seal, & contract and be contracted with, sue and be sued, implead and be impleaded, and pos'ess all the powers, franchises, immunities, property, rights, and privileges now enjoyed or held by the said parties of the first part, or the said parties of the second part, or which either of said companies, parties of the first part and second parts, at the execution of these presents has, or is, entitled to by virtue of their respective charters and under and by the laws of the respective States of Illinois and Iowa relating or applicable to them respectively; and the said parties of the

117 first and second parts, for the consideration aforesaid, do hereby,

mutually and respectively, grant, bargain, sell, release, convey, assign, transfer, and set over, unto the said consolidated company, the Chicago, Rock Island and Pacific Railroad Company, all and singular their several and respective railroads, railroad lands, rights of ways, stations, station grounds, lands, lots, bridges, cars, locomotives, rolling-stock, furniture, tools, machinery, iron, fuel, timber, stone, materials, and goods, and chattels, and all and singular their several and respective bonds, bill, notes, accounts, demands, moneys, & things in action, and all and singular their several and respective estates, property, & effects, real & personal, movable & immovable, at law and in equity, wher'soever situated and howsoever held, and all and singular their several & respective franchises, privile*d*ges, immunities, and corporate rights, and do mutually agree and declare the same, from the execution of these presents and henceforth, to be vested in & held and pos'essed by the said consolidated company, and its successors and assigns forever, to and for its own use, benefit, and behoof, to all intents & purposes; and the said parties of the first and second parts, for the consideration aforesaid, do hereby mutually grant and agree that all and singular the debts, obligations, and liabilities whatsoever of the said parties of the first and second parts, respectively, from the execution of these presents and henceforth, shall be and are the proper debts, obligations, & liabilities of the said consolidated company, and its successors forever, to all intents and purposes, and that all the contracts, bonds, certificates, deeds, and other acts an' writings of each of the said parties of the first and second parts shall continue in full force and effect as the proper contracts, bonds, certificates, deeds, acts, and writings of the said consolidated company, without any surrender or change; and that all and singular the resolutions, proceedings, and doings of the respective boards of directors of the said respective companies, parties of the first and second parts, and of the executive committees thereof, shall be and hereby are ratified, confirmed, and declared valid, and shall be observed and kept by the said consolidated company; and that all the present stockholders of either of the said companies, parties of the first and second parts, henceforth shall be stockholders of the said consolidated company in the like amounts and with the like liabilities and rights between them severally and the said consolidated company as now exists between them severally, and the said companies, parties of the first and second parts, respectively.

And the said parties of the first & second parts, for the consideration aforesaid, do hereby mutually grant, agree, and declare that the said consolidation shall take effect, and the said consolidated company shall commence and go into operation, immediately on the execution of these presents, and that the board of directors of the said consolidated company shall carry the said consolidation into effect and due operation by all ne*e*ssary acts and things for that purpose.

And the said parties of the first and second parts, for the consideration aforesaid, do hereby further grant, agree, and declare as follows, namely:

First. That the number of directors of the said consolidated company shall be thirteen, and the same persons who, at the time of the execution of these presents, are directors of the Chicago and Rock Island Railroad Company shall be the directors of the said consolidated railroad company until the next election hereinafter provided for, and until their successors shall be duly chosen. The several officers of the
118 said Chicago and Rock Island Railroad Company, at the time of the execution of these presents, shall be the like officers of the

said consolidated company during the pleasure of the board of directors. thereof. The by-laws of the said Chicago and Rock Island Railroad Company shall be the by-laws of the said consolidated company until altered or repealed by the board of directors of the said consolidated company; and the common seal of the said parties of the second part by them hitherto held and used as to corporate seal of the said Chicago, Rock Island and Pacific Railroad Company, shall be the common and corporate seal of the said consolidated company, until the board of directors of the said consolidated company shall otherwise direct and provide.

Second. That the capital stock of the said consolidated company shall be the aggregate in amount of the capital stock which the said two companies, parties of the first and second parts, are authorized to create, issue, or have by virtue of their respective charters, and the laws of their respective States under the jurisdiction of which they were respectively organized as aforesaid, and their several & respective articles of association and incorporation, or which the said consolidated company is or shall be authorized to create, issue, or have by virtue of this present consolidation, or the laws authorizing such consolidation, or any laws which are or may be applicable to the said consolidated company, and the same may be increased to the extent and in the manner authorized by law, but the total amount of the capital stock of the said consolidated company, at the time it shall commence and go into operation, shall be deemed and taken to be equal to and limited at the aggregate of stock theretofore issued or agreed to be issued by the said parties of the first and second part' respectively; and the certificates of shares of stock in either of the companies, parties of the first and second parts, shall be returned and surrendered to the said consolidated company, and new certificates for the like number of shares of stock of the said consolidated company, of like amount and of like sums, paid, and of like liability for installments shall be issued to the holders therefor.

Third. That the first annual meeting of the stockholders of the said consolidated company, for the election of directors thereof, shall be held at the office of the said consolidated company, in the city of Chicago, in the State of Illinois, on the first Wednesday of June, one thousand eight hundred and sixty-eight, and the same shall be held and conducted in the manner provided by the charter and by-laws of the said company, parties of the first part, unless otherwise lawfully provided by by-laws of the said consolidated company.

Special meetings of the stockholders may be called by a majority of all the directors of the said consolidated company at such times and places as they may appoint, and the board of directors of the said consolidated company shall have power to fill vacancies in their own board until the next following annual election.

In witness whereof the said parties of the first and second parts have caused these presents to be made and executed under their respective common seals, and to be evidenced by the signature of the presiding officer of each of the said companies, parties of the first and second parts, and the corporate seal thereof, the day and year first above written.

(Endorsed:) Exhibit No. 3. Filed 16 May, '67.
W. G. WOODWARD, *Clerk.*

119 *Exhibit No. 4.*

THE UNITED STATES OF AMERICA,
District of Iowa :

In the circuit court of the United States in and for the said district of Iowa, at the May term thereof, A. D. 1866. In equity.

At a regular term of said circuit court, begun & held at Des Moines, in the State of Iowa, on the second Tuesday, being the eighth day of May, A. D. 1866—

Present, the Honorable James M. Love, judge of said district, presiding.

THOMAS C. DURANT, JACOB S. WETMORE, and Robert B. Minturn, jr., complainants,
ag't
THE MISSISSIPPI & MISSOURI RAILROAD Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, and John Webber, defendants.
} Original bill in equity for foreclosure of mortgage.

EDWARD W. DUNHAM, COMPLAINANT,
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber, defendants.
} Cross-bill.

THOMAS E. WALKER AND FRANKLIN Haven, complainants,
vs.
THE MISSISSIPPI & MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, & John Webber, defendants.
} Cross-bill.

These causes came on to be further heard at this term, to wit, on this eleventh day of May, A. D. 1866, upon the report of Thomas F. Withrow, esq., the master to whom the same were referred; and thereupon, all of the said parties appearing by their respective solicitors, and no exceptions being taken by any of them to the said report, on motion of John N. Rogers, esq., solicitor and counsel for said complainants Durant and others, in said original bill, it is ordered that said report be, and the same is hereby, in all things confirmed.

And, thereupon, the said causes coming on for final hearing, and having been argued by counsel, upon full consideration thereof, it was ordered, adjudged, and decreed as follows, to wit:

That the said Mississippi & Missouri Railroad Company do pay, or cause to be paid, unto the said trustees or mortgagees set forth in the said original and cross-bills respectively, within ten days from this date, the amounts found by said master's report to be due and unpaid upon the bonds of said company secured by said mortgages respectively, to wit: To said Edward W. Dunham, the sum of one million three hundred and thirty-six thousand six hundred and forty-three dollars and fifty cents, being the amount due & unpaid on the bonds secured by the

said mortgage by said railroad company to said Dunham, as
120 trustee, dated July 1st, 1865, & conveying the first or eastern division of said railroad, extending from the eastern line of the State of Iowa, at Davenport, to Iowa City and Muscatine, with rolling-stock and property appurtenant thereto. To said Edward W. Dunham, the further sum of four hundred and thirty-four thousand four hundred and seventy-eight dollars, being the amount due & unpaid on the bonds secured by the said second mortgage executed by said railroad company to said Dunham, as trustee, dated July 1st, 1856, and conveying the same property as the first-mentioned mortgage. To said Edward W. Dunham, the further sum of seven hundred and twenty-six thousand and thirty-two dollars and eleven cents, being the amount due & unpaid on the bonds secured by the said mortgage, executed by said railway company to said Dunham, as trustee, dated July 1st, 1856, and conveying that division of said railroad known as the Oscaloosa division, extending west from the city of Muscatine, and the rolling-stock and property appurtenant thereto. To the said Thomas E. Walker and Franklin Haven, the sum of four million two hundred and thirty-nine thousand nine hundred and eighty-two dollars & seventy-one cents, being the amount due on the bonds secured by the said mortgage, dated May 8th, 1857, executed to Thomas E. Walker and Curtis B. Raymond, as trustees, and conveying the division of said railroad known as the second division, extending westwardly from Iowa City, and all rolling-stock and other property appurtenant thereto, together with all the interest of said company in the lands granted by the United States to the State of Iowa, and by said State to said railroad company, in aid of the construction of said railroad, by the several acts of Congress, and of the general assembly of Iowa, set forth or referred to in said mortgage. And to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., the sum of seven hundred and forty-five thousand four hundred and nine dollars and two cents, being the amount due and unpaid on the bonds secured by the said mortgage, made by said company to said Durant, Wetmore, and Minturn, as trustees, dated December 10th, 1861, and conveying the whole and every part of said railroad, rolling-stock, & other property and lands.

Second. That default of such payment of the said sums of one million three hundred and thirty-six thousand six hundred and forty-three dollars and fifty cents, and four hundred & thirty-four thousand four hundred and seventy-eight dollars respectively to the said Edward W. Dunham, or either of them, the said property, rights, and franchises of said railroad company so conveyed by said mortgages to said Dunham on said eastern or first division of said road, to wit:

The said railroad, together with all and singular the railways, land procured or occupied for right of way, bridges, fences, privileges, rights, and real estate owned by said company, between the city of Davenport & the cities of Iowa City and Muscatine; and all the tools, issues, income, and profits, and all the lands used and occupied for depots or stations, with all the buildings standing thereon or procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, & machinery procured for or connected with the division of sixty-seven miles of road before described, and in any way belonging or appertaining to the said sixty-seven miles of road, including all property of the company on said division, real and personal; and all the rights, credits, and franchises of the said company in said division of railroad be sold at public auction by the master hereinafter appointed to execute this decree, and in the manner herein-

after directed, for the purpose of satisfying the said amounts so decreed to be paid to said Dunham, and remaining unpaid.

121 The following is a list, or schedule of the lands and lots belonging or appertaining to said first division of said railroad, and which are to be sold together therewith, to wit:

Lot No. (3,) three, in block No. sixty-four, (64;) lot No. nine, (9,) in block No. sixty-seven, (67;) lot No. two, (2,) in block No. one hundred & ten, (110;) lots Nos. four, (4) and five, (5,) in block No. seven, (7,) and the west half of lot No. three (3,) in block No. seven (7,) all in the city of Muscatine, in the county of Muscatine, and State of Iowa.

Also, all that part of the east fifty-one & ninety-two hundredths ($51\frac{92}{100}$) acres, of the west one hundred and ten and ninety-two hundredths ($110\frac{92}{100}$) acres, of the northwest quarter of section ten, (10,) township seventy-eight, (78,) range two (2) west, which lies north of the track of said raidroad in Muscatine County, containing thirty-six thirty-eight-hundredths ($36\frac{38}{100}$) acres.

Also, the south sixty (60) acres of the west half of the southeast quarter of section six, (6,) township seventy-eight, (78,) range two (2) west, in Muscatine County, containing sixty (60) acres.

The following is a list or schedule of the engines, cars, & rolling-stock belonging or appertaining to said first division of said railroad, and to be sold together therewith, to wit:

Ten locomotive engines, with their tenders, being those known and designated by the following names, to wit:

The Iowa.	The Davenport	The Nebraska.
The Muscatine.	The Oskaloosa.	The Des Moines.
The Samson.	The A. C. Flagg.	The John A. Dix.
	The Antoine Le Claire.	

Fifty (50) box freight cars, numbered from two (2) to one hundred, (100,) even numbers, inclusive.

Ten (10) platform cars, numbered from one (1) to nineteen, (19,) odd numbers, inclusive.

Six (6) passenger cars, numbered from one (1) to six, (6,) inclusive.

Five (5) hand-cars; three (3) truck cars; two (2) baggage cars numbered one (1) & two (2.)

Third. That in default of payment to said Edward W. Dunham of said sum of seven hundred and twenty-six thousand and fifty-two dollars and eleven cents, decreed to be paid to him as the amount due on said mortgage, executed to him on said Oskaloosa division of said railroad, all the property, rights, and franchises conveyed by said mortgage, as hereinafter set forth & specified, be sold by said master hereinafter appointed, in the manner hereinafter directed, for the purpose of satisfying the said amount, to wit:

The said railroad of said company, constructed and to be constructed, together with all and singular the railways, lands used and occupied for right of way, together with all bridges, fences, privileges, & rights owned by said company between the city of Muscatine and the city of Oskaloosa, and all the tolls, incomes, issues, and profits to be had from the same; and all the lands used and occupied for depots or stations, with all buildings standing thereon, or procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, and machinery procured for or connected with the said division of ninety-five miles of road (being that extending from the city of Muscatine to the city of Oskaloosa) and in any way belonging or appertaining to the said ninety-five miles of road, now constructed and to be

constructed, including all the property, rights, credits, & franchises of said company in said divison of railroad.

122 The following is a list or schedule of the lands owned by said company, belonging or appertaining to said Oskaloosa division of said railroad, and which are to be sold together therewith, to wit:

The northeast quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) of section twenty, (20,) township seventy-six, (76,) range two (2) west, situated in Muscatine County, & containing eighty (80) acres.

All of the southwest quarter (¼) and the west half (½) of the southeast quarter (¼) of section thirty, (30,) township seventy-six, (76,) range two (2) west, which lies north of the track of said railroad, situated in Muscatine County, and containing one hundred & ten (110) acres.

Fourth. That in default of such payment of said sum of four millions two hundred and thirty-nine thousand nine hundred and eighty-two dollars & seventy-one cents, hereinbefore decreed to be paid to said Thomas E. Walker & Franklin Haven, as the amount due on said mortgage to them, on the division of said railroad extending from Iowa City westwardly to Council Bluffs, all the property, lands, rights, and franchises conveyed by said mortgage, as the same are hereinafter set forth and specified, be sold by said master hereinafter appointed, and in the manner hereinafter directed, in order to satisfy and pay the said amount due on said mortgage. to wit:

All and singular the railway stations, depot lands, and other lands appurtenant to said railroad, owned by said company at the date of said mortgage, or thereafter acquired, constituting or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri River, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, appurtenant to the above-described division of said railroad, and all the franchises, rights, and privile*d*ges appurtenant to said division.

Also, all the right, title, interest, claim, or demand which said railroad company had at the date of said mortgage, or has since acquired, in or to all public lands of the United States granted by the act of Congress, approved May 15th, 1856, and set forth in said mortgage to the State of Iowa, and by the general assembly of said State, by the act thereof recited in said mortgage, approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company.

The following is a list or schedule of the locomotives and cars belonging or appurtenant to said division of said railroad, and which are to be sold together therewith, to wit:

Three (3) locomotives, with their tenders, to wit: Those known and designated as the "N. B. Judd," "Iowa City," and "C. W. Durant."

Three (3) passenger cars, numbers seven, (7,) eight, (8,) and nine (9.)

Forty (40) box freight cars, being all that are numbered above one hundred (100.)

Forty (40) platform cars, being all that are numbered above nineteen (19.)

Two (2) baggage cars, numbers three (3) and four (4.)

Twenty (20) dirt cars, twenty (20) hand cars, nine (9) truck cars.

The following is a list or schedule of lands and lots belonging or appertaining to said division of said railroad, and which are to be sold together therewith, to wit:

Lots one (1) and eight, (8,) block fifteen, (15;) lots one (1) and eight, (8,) block eighteen, (18;) lot three, (3,) block eleven, (11;) lot one, (1,) block twenty-two, (22,) all in Iowa City, Johnson County.

123 The southeast quarter (¼) of the northeast quarter (¼) of section twelve, (12,) township eighty, (80,) range twelve (12) west, in Iowa County, containing forty (40) acres.

A list or schedule of the said lands granted by the United States to the State of Iowa, and by said State to said railroad company, is contained in "Exhibit A," hereto annexed, and made a part of this decree.

Fifth. That in default of such payment of such sum of seven hundred and forty-five thousand four hundred and nine dollars and two cents to said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., decreed to be paid to them as the amount due on said mortgage by said railroad company to them, all the property, rights, & franchises conveyed by said mortgage, as the same are hereinafter set forth and specified, be sold by the said master hereinafter appointed, in the manner hereinafter directed, in order to satisfy and pay the said amount so decreed to be paid, to wit, all and singular the roadway stations, depot lands, & other lands appurtenant to said railroad, and necessary for the uses and purposes of the road, owned by said company at the date of said mortgage, or since acquired, constituting or belonging to the railroad of said company, extending from Davenport, in the State of Iowa, to Muscatine, and to Council Bluffs, on the Missouri River, and also on that portion of their line of road extending from Muscatine to Oskaloosa, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever appurtenant to the said railroad, and all the rolling-stock and personal property of the said Mississippi and Missouri Railroad Company, property belonging to their road and appertaining thereto, and all the franchises, rights, and privileges appertaining to the same, existing at the date of said mortgage, or since acquired.

Also, all right, title, interest, claim, or demand which said railroad company had at the date of said mortgage or have since acquired in or to all public lands of the United States, granted by act of Congress, approved May 15th, 1856, to the State of Iowa, and by the general assembly of said State by an act approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company, with all the estate, right, title, & interest, property and possession, claim or demand, whatever, at law or in equity, of the said company in and to the same, and each and every part and parcel thereof.

That said property, interests, rights, and franchises, consisting of & embracing all and every portion embraced in and conveyed by all the said mortgages hereinbefore referred to, as the same are hereinbefore set forth and specified.

Sixth. That Thomas F. Withrow, esq., be, and he hereby is, appointed a special master commissioner for the purpose of carrying into execution this decree,

That any sale hereunder shall be at auction to the highest bidder for cash, and shall be made at the court-house in the city of Davenport, in County of Scott, and State of Iowa, at such time as said master shall appoint.

That notice of such sale shall be given by said master by advertisement thereof for four successive weeks preceeding the day of sale, in three newspapers, published respectively in the cities of Davenport, Des Moines, and Council Bluffs, in the State of Iowa.

And in case the said lands granted by the United States, as hereinbefore set forth and specified in "Exhibit A," hereto annexed shall be intended to be sold at such sale, such advertisement thereof shall

124 contain, or be accompanied by, in at least one of said newspapers

in which the same shall be published, a full and complete schedule or list of said lands so intended to be sold.

Seventh. That, at any sale made under this decree, each of the said several divisions or portions of said railway, to wit, the first or eastern division, extending from the east boundary line of the State of Iowa, at Davenport, to Iowa City and Muscatine, the Oskaloosa division extending from Muscatine to Oskaloosa, or so far as the same may have been constructed, and the second or western division extending westwardly from Iowa City to Council Bluffs, or so far as the same may have been constructed, together with all the property, real or personal, rights, privileges, or franchises of said company, engines, cars, and rolling-stock of every kind belonging or appertaining to such division, or connected, or used therewith, as fully as the same are hereinbefore specified & set forth, or covered or conveyed by the said mortgages, or either of them, shall be sold separately and apart from any other property to be sold at such sale.

Eighth. That, subject to the provisions and directions hereinafter made and given, as to payment of costs of suit and sale, and of the costs and expenses of the trustees, the said master shall make distribution of the proceeds of such sale as follows, to wit:

He shall, out of the proceeds of the sale of the said first division of said railroad, and property and franchises, appurtenant thereto and sold therewith, first pay to the said Edward W. Dunham, as trustee for the holders of the bonds secured by said first mortgage on said division, the said sum of one million three hundred and thirty-six thousand six hundred and forty-three dollars and fifty cents, due on said mortgage, with interest thereon at six per cent. per annum from this date to the date of such sale, or so much thereof as said proceeds shall be sufficient to pay, and as shall at the time of such sale remain unpaid by such railroad company to said Dunham.

And out of any surplus of said proceeds then remaining, he shall pay to said Edward W. Dunham, as trustee for the holders of bonds secured by the said second mortgage on said division, the said sum of four hundred and thirty-four thousand four hundred and seventy-eight dollars due on said second mortgage, with interest thereon at the rate aforesaid, from this date to the date of such sale, or so much thereof as said railroad company shall have failed to pay, and as such surplus shall be sufficient to pay.

And out of the proceeds of the sale of the said Oskaloosa division of said railroad, and the property and franchises appurtenant thereto and sold therewith, he shall first pay to the said Edward W. Dunham, as trustee for the holders of bonds secured by the said mortgage to him, on the said division of said railroad, the said sum of seven hundred and thirty-six thousand and thirty-two dollars and eleven cents due on said mortgage, with interest thereon at the rate aforesaid, from this date to the date of such sale, or so much thereof as said railroad company shall have failed to pay, and as said proceeds of sale shall be sufficient to pay.

And out of the proceeds of the sale of the said second or western division of said road, extending west from Iowa City, and of the property and franchises belonging and appertaining thereto, and sold therewith, as well as out of the proceeds of the sale of said lands specified in Schedule A, hereto annexed, or of the interest of said company therein, or of any part thereof, the said master shall first pay to the said Thomas E. Walker and Franklin Haven, as trustees for the holders of bonds
125 secured by said mortgage to said Walker & Raymond on said division of said road & said lands the said sum of four millions

two hundred & thirty-nine thousand nine hundred & eighty-two dollars and seventy-one cents due on said mortgage, with interest thereon at the rate aforesaid, from this date to the date of said sale, or so much thereof as the said railroad company shall have failed to pay, and as said proceeds of sale shall be sufficient to pay.

And out of any surplus which shall remain from the proceeds of either and all of said divisions of said railroad, & said lands, and other property, after payment thereout, of the several sums hereinbefore directed to be paid thereout, respectively, the said master shall pay to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., as trustees for the holders of bonds secured by said mortgage to them on the whole of said railroad lands and other property, the said sum of seven hundred and forty-five thousand four hundred and nine dollars and two cents due on said mortgage, with interest thereon at the rate aforesaid, from this date to the date of said sale, or so much thereof as shall then remain unpaid by said company, and as said surplus shall be sufficient to pay.

And if any surplus shall remain of said proceeds of sale, after payment thereout of all the sums hereinbefore directed to be paid, the same shall be by said master paid into this court, to be disposed of as the court shall hereafter order and direct.

Ninth. That the said several trustees shall, on receipt by them respectively of the money hereinbefore directed to be paid to them out of the proceeds of such sale, apply the same in payment to the holders thereof of the bonds & c'upons, secured by said several mortgages, to the payment of which said sums are respectively applicable, paying the same in full, if the said proceeds of sale shall prove sufficient to do so; and if not, applying the moneys properly applicable to the payment of each class of bonds, upon said bonds, pro rata.

And for the purpose of enabling said trustees to close their respective trusts, it is hereby ordered and decreed that all persons holding bonds or c'upons secured by the said mortgages or either of them, shall present the same for payment to said trustees respectively within two years from the date of the sale under this decree, and, in default of such presentation for payment within said two years, the holders of such bonds & c'upons, not so presented, shall be debarred from all rights to have any portion of the proceeds of the sale of said mortgaged property applied in payment of said bonds & c'upons, and any surplus of said proceeds then remaining in the hands of said trustees, or either of them, shall be applied by them to pay and satisfy any of such bonds to which the same may be properly applicable, and which shall have been presented to said trustee or trustees within the time above limited, and shall not previously have been paid in full; applying such surplus upon such bonds and c'upons pro rata, and in proportion to the amounts due and unpaid on them respectively, in case the amount shall not be sufficient to pay them in full.

And if, after payment of all such bonds and c'upons in full, there shall still remain a surplus of the funds in the hands of such trustee or trustees, then the same shall be reported to this court, and shall be disposed of as the court may direct.

And the said several trustees are hereby ordered and directed, on receipt by them of their respective shares of the proceeds of sale, to give notice to the holders of bonds and c'upons entitled to share in the distribution thereof, to present their bonds and c'upons for pay-
126 ment of amounts to be paid thereon by said trustees, at some place to be designated in said notice; and that if not presented

within the time aforesaid, they will be barred as aforesaid, by publication in some newspaper, published in the city of New York, daily, for ten days.

Tenth. That the costs of these suits, including those of all the parties thereto, to be taxed, together with the costs and expenses of executing this decree, shall be apportioned and charged by the said master upon the proceeds of the sale of the said several divisions of said railroad and property appurtenant thereto (said lands granted by the United States being for this purpose considered and treated as part of the property appurtenant to the second or western division of said railroad,) which shall be sold, under this decree, pro rata, in proportion to the amount realized by the sale of each division respectively; and the proportion of such costs, so charged on the proceeds of each division, shall first be paid by said master thereout, before making any of the other payments hereinbefore directed to be made out of such proceeds.

And the costs and expenses of the said trustees in the said several mortgages respectively, in executing their respective trusts, including reasonable counsel fees and compensation to said trustees, all of which shall be fixed & allowed by the court or a judge thereof, shall be paid by them respectively, after payment of said taxable costs, out of the proceeds of sale of the division or divisions of said railroad & other property, covered & conveyed by the mortgage or mortgages, to such trustee or trustees respectively, as hereinbefore directed; but not until after payment in full of the amount or amounts due on any prior mortgage or mortgages, to be paid out of said proceeds as hereinbefore directed, together with the costs and expenses of the trustee or trustees in such prior mortgage or mortgages.

Eleventh. That the said railroad company and its officers shall account for and pay over to the said master, and that he be and is hereby authorized and directed to receive from them, the nett earnings and income of said railroad, from this date up to the day of such sale (in case a sale shall be made under this decree,) and until any purchaser at said sale shall take possession; and any amount, so accounted for and paid over to said master, shall be added to the proceeds of sale, and applied in the same manner as hereinbefore directed.

Twelfth. That upon the completion of any sale made under and in pursuance of this decree, the said master shall make, execute, and deliver to the purchaser or purchasers thereat, a good and sufficient deed or deeds, conveying to him or them the property, rights, privileges, and franchises, so sold to and purchased by him or them, which said deed or deeds shall be valid & effectual to convey to, and vest in, said purchaser or purchasers, all the right, title, and interests, claim, and demand, whatever, in law or equity, which the said Mississippi & Missouri Railroad Company had at the time of the execution and delivery of the said mortgages, or either of them, or have since acquired, or which was transferred and conveyed by the said mortgages or either of them, of, in, or to the said property, rights, privileges, or franchises so sold and conveyed by said master.

And from and after such sale, the said Mississippi and Missouri Railroad Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber, and all and every person or persons claiming by, through, or under them, or either of them, subse-
127 quently to the filing of the original bill of complaint herein, be, and they are hereby, forever barred & foreclosed of and from all and every interest, estate, right, claim, or equity of redemption, of, in, or

to the said property, rights, privileges, or franchises so sold, and every part and parcel thereof.

That upon the confirmation of such sale and conveyance by said master, by the order of this court or a judge thereof, the said railroad company shall surrender possession of said railroad, together with all the depots, stations, grounds, rolling-stock, materials, and other property of every kind and description appurtenant or belonging thereto, (so far as the same shall have been so sold under this decree,) to the purchaser or purchasers thereof, and that, in default of such surrender, the master hereby appointed may take possession of said property, and deliver the same to such purchaser or purchasers, and that proper process may issue from this court for that purpose.

Thirteenth. And it is further ordered that said master make report to this court of his actings and doings in the premises at the next rule day after such sale.

Fourteenth. And it is further ordered, adjudged, and decreed that for any portion of the said sums found due on the bonds secured by said mortgages respectively, which shall remain due and unpaid after sale of the said mortgaged property, under and by virtue of this decree, in consequence of the inefficiency of said proceeds of sale to pay the same, the said trustee or trustees to whom said amounts respectively hereinbefore directed to be paid, shall have judgment against The Mississippi and Missouri Railroad Company, and shall respectively be entitled to have a writ or writs of general execution against all the property of said company, to collect the same as provided by the rules and practice of this court.

(Endorsed:) Exhibit No. 4. Filed 16 May, '67.
W. G. WOODWARD, *Clerk.*

On this day, to wit, the sixteenth day of October, 1867, came the plaintiffs, by their solicitors, Grant and Smith, and filed in said clerk's office the deposition of Ebenezer Cook in said cause; which deposition is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

Deposition of Ebenezer Cook, of Davenport, Scott County, Iowa, a witness produced, sworn, and examined on behalf of the plaintiff, to be read in evidence on the trial of the above-entitled cause, taken at Davenport, on the 28th day of February, 1867, notice of the time of taking the deposition being waived by the defendants.

James Grant appeared for the plaintiff, and Cook and Drury for the defendants.

Interrogatory 1st. What is your age, place of residence, and occupation?

Answer. Fifty-seven years; reside at Davenport, Iowa; employee of Chicago, Rock Island and Pacific Railroad.

Int. 2d. Have you any official connection with the Mississippi
128 and Missouri Railroad Company, and the Chicago and Rock Island corporation, or either of them; and, if so, how long have you held such connections, and what are they & have they been?

Answer. I am secretary of the Mississippi & Missouri Railroad Company, & a director therein; and have been for nearly four years; I have been a director in the Chicago and Rock Island Railroad Company from its organization until its consolidation with the Chicago, Rock Island and Pacific Railroad Company, in 1866.

Inter. 3. Please look at the following paper (the witness is here shown Exhibit A of the bill entitled proceedings of a meeting of the bond and stock holders of the Mississippi & Missouri Railroad Co., held Oct. 18, 1865, &c.,) and state if you know that a meeting as is therein set forth was held and the proceedings thereof made known to the Mississippi & Missouri Railroad Company, and the Chicago and Rock Island Railroad Companies, prior to 1st Nov., 1865.

Answer. I was present at the meetings of the bond and stock holders of the Mississippi & Missouri Railroad Company, in New York, on the 18th & 20th days of Oct., 1865, and said exhibit correctly sets out the proceedings; there was also present one or two other directors of the Chicago and Rock Island Railroad Company, and four or five directors of the M. & M. R. R. Co. I do not know that the proceedings were ever formally brought before either board in session; but I think nearly all the directors of both companies were aware what in substance had been done at those meetings prior to Nov. 1, 1865.

Int. 4. Please look at the following papers (the witness is here shown Exhibits B & C, referred to in the bill, "one memorandum of undertakings, &c., and one memorandum of an agreement, &c.," being the contracts for sale and occupancy of Miss. and Mis. R. R. of Nov. 1, 1865,) and state whether or not said contracts of Nov. 1, 1865, were made by the parties in consequence of, and to carry out the resolutions of, said meetings of 18th & 20th Oct., 1865, referred to in question 3, and what power had the executive committee of said railroad companies.

Answer. As early as September, 1865, negociations were commenced by some individual directors of the Chicago and Rock Island with some individual directors of the M. & M. R. R. Co., for the sale and transfer of the M. & M. to Chicago and Rock Island. These negociations were commenced and continued without any authority from either board of directors, I think, until about the 10th October, when a direct proposition was made (which was approved by the ex-committee of the Chicago and Rock Island Railroad Company) that the Chicago and Rock Island would give $5,500,000 for the property of the Mississippi and Missouri, making the payment in satisfactory bonds. Thereupon the meeting of the 18th & 20th October, called by a public notice and held as before stated. That meeting appointed Mess. Stanton, Elliott, and Wilson a committee, by the passage of the resolution offered by Judge Emott, and the negociations as to the mode and terms of payment and details of sale was thereafter conducted exclusively with that committee. The agreements referred to were prepared by the committee, submitted to the executive committee of the M. & M. R. R. Co., who authorized their execution on the part of that company, and the executive committee of the C. & R. I. R. R. Co. authorized the execution thereof on the part of the C. & R. I. co., both of said executive committees having, by the by-laws, the full power of their respective boards when the boards were not in session, and they were not then in session.

Int. 5th. State whether or not the Chicago and Rock Island
129 Railroad Company caused the company referred to in article 2 of said "memorandum of understanding," &c., of 1st Nov., 1865, to be incorporated under the general laws of the State of Iowa. If so, when, & what was the name of the company?

Answer. I do not think there was any action of the board of directors or executive committee of the Chicago and Rock Island co., in relation to the organization of the company in Iowa; but, on the 28th day of May, 1866, a company was organized in New York under the laws of the State of Iowa, the corporators and directors being all directors of the Chicago and Rock Island Railroad Company, and I think nearly all, if not all, the directors of the C. & R. I. co., knew of the organization, which was called the "Chicago, Rock Island and Pacific Railroad Company," and that the object of the corporation was to purchase the property of the Mississippi & Missouri Railroad Conpany.

Int. 6th. State whether or not the Mississippi and Missouri Railroad Company, in pursuance of Article 1 of said "memorandum of understanding," took the proper steps to cause the mortgages upon its line to be foreclosed and its entire property, real and personal, to be sold so that the purchaser should be able to transfer a perfect and unincumbered title to such incorporated company in Iowa as the Chicago and Rock Island Railroad Company might designate to become the purchaser and owner thereof; state whether the Miss. & Mo. caused a new suit to be commenced or adopted one already commenced, and, if so, what suit, & state whether a foreclosure and sale was had, and when and where.

Answer. I do not know that the Mississippi and Missouri Railroad Company ever took any steps whatever for the foreclosure of the mortgages. I do not think that company ever did anything in relation to the matter of purchase and sale. After authorizing the agreements before referred to be executed, Mess. Stanton, Elliott, and Wilson, the committee aforesaid, took steps to get the bonds of the company deposited with the Union Trust Company for their use, and as soon as they had the control of a sufficient number of the bonds of each class they applied to the trustees of the land-grant bonds, Mess. Walker and Haven, and to E. W. Dunham, trustee in the 1st & 2nd mortgages, eastern division, and the Oskaloosa division, to cause the mortgage to be foreclosed, and thereupon those trustees in the mortgages directed Cook and Drury to institute suit for foreclosure. They did so, I think, in the Scott County district court. In the meantime, Messrs. Durant, Minturn, and Wetmore, trustees in a junior mortgage, had commenced a suit for foreclosure of that mortgage in the circuit court of the United States at Des Moines, but had not made the trustees in the older mortgage parties. In April, 1866, the Chicago & Rock Island R. R. Co. bought the major part of the bonds secured by that mortgage and got the control of that suit, and thereupon Messrs. Walker and Haven, and E. W. Dunham were made parties thereto. They severally filed cross-bills to foreclose the mortgages in which they were trustees, and at the May term, 1866, all the mortgages were foreclosed and sale of the property ordered, and on the 9th day of July, 1866, the property was sold at Davenport, Iowa, by a special master appointed for that purpose.

Int. 7th. State what person or company became the purchaser, at said foreclosure sale, and for what prices, and whether or not the corporation to be created by the Chicago and Rock Island, in pursuance of article 2 of said contract, became the purchaser, and thereby dispo'sed with the transfer and sale provided in article 2 of said memorandum of 1st Nov., 1865.

130 Answer. The property was purchased at the sale above mentioned by the Chicago, Rock Island and Pacific Railroad Com-

pany, being the same company I have stated was organized May 28th, 1866. The property was sold in three divisions, and—

The eastern division sold for	$1,000,000
The Oskaloosa division for	300,000
The land-grant division & lands for	800,000
	$2,100,000

Int. 8th. State whether or not on the day of said sale, under said foreclosure, any money was paid, and if not paid then, when & by what corporation it was ultimately paid or furnished, & whether or not afterwards the money paid was converted into the bonds "part of the bonds for $5,550,000 provided to be paid by the Chicago & Rock Island Railroad Company," for the purchase of the property of the Mississippi & Missouri Railroad Company referred to in article 4 of said memorandum of understanding of 1st Nov., 1865; state the whole process, & also state whether or not the Chicago & Rock Island Railroad Company in the end paid any more or other money than the $5,500,000 in bonds provided to be paid by said contract.

Answer. No money was paid on the day of sale, but an arrangement was made to pay the amount of the several bids (less the costs) to the trustees in the mortgages in New York, and it was so done. The Chicago & Rock Island Railroad Company loaned the Chicago, Rock Island and Pacific Railroad Company the money to settle with the trustees for the amount of the purchase-money at the sale under foreclosure.

The committee, through the Trust Company, were in possession of the great bulk of the bonds secured by the several mortgages, & an arrangement was made that they would deliver to the Chicago, Rock Island and *and* Pacific co. those bonds, and the Chicago & Rock Island co., agreed to pay therefor the Union Trust Company certificates in the manner therein specified, and to furnish the requisite amount of money to enable the trustees in the mortgages to pay off such bonds as had not been deposited with the trust company for the committee. Those bonds were taken to the proper trustees by the C., R. I. & P. co., and that co. received the pro rata share of money arising from the sale, under the decree, to which their bonds were entitled, and paid their loan from the C. & R. I. co., less the amount of money left in hands of trustees as above stated. Before any payment was made of the trust-company certificates a consolidation of the properties of the two companies spoken of in this answer was made under the name of the Chicago, Rock Island and Pacific Railroad Company, which company was required by the articles to perform all the contracts and agreements of each of the other companies. The consolidated company provided for issuing $9,000,000 bonds, with the right to increase to $13,500,000, in certain events, dated September 1, 1866, payable 30 years after date. Of these, $5,500,000 was appropriated to paying off the trust-company certificates & raising money to replace that which had been left in the hands of the trustees as stated, the costs, expenses, &c. I do not know the amount of the bonds which have been paid out, but as near as I can recollect all the trust-co. certificates issued for bonds, except about $36,000, had been taken up two weeks since. I cannot tell whether in the end the successor of the Chicago and Rock Island co. will have paid more or less than $5,500,000, as the latter co. purchased some of
the bonds of the M. & M. R. R. Co. at a higher rate than pro-
131 vided in the schedule, and some at a less rate. (The Ch. &
R. I. co have not yet been called upon to pay over the $5,500,000.)

Int. 9th. By ref'rence to the proceedings of the meeting of the stock and bond holders of the Miss. & Mo. co., of 20th Oct., 1865, Messrs. Wilson, Stanton, and Elfiott were appointed a committee to arrange the terms and mode of payment with the Chicago and Rock Island Railroad Company and the details of the sale, and they were instructed to make an arrangement with some trust co. to receive the bonds & stocks of the parties assenting, and issue certificates, &c. Now please state if Messers. Stanton, Elliott, and Wilson performed the duty imposed on them, and he shown a circular purporting to be issued by them, marked Exhibit D, and a form of contract with them, and stock and bond holders assenting, marked Exhibit E. State whether or not they issued said circular, and if the stock and bond holders assenting signed said contract.

Answer. I have already stated that Messrs. Stanton, Elliott, and Wilson did perform the duties inquired about. Such a circular was issued by them, and such an agreement was posted into books, and all bondholders & stockholders who surrendered their bonds & stocks signed said agreement by themselves or agents.

Int. 10th. The sale under the foreclosure was on the 9th of July, 1866. Can you state how many of the bondholders had signed said contract & deposited their bonds with the trust company at that date, and how many of the stockholders at that date, and how many of each class (bond and stock holders) have up to this date consented to the terms of said sale, and accepted the new bonds according to the terms of said meeting of 20th Oct.?

Answer. I cannot state (having left the paper necessary in New York a few days since) what amount of bonds and stocks had been deposited with the trust company up to 9th July, 1866, but see from my memorandum that it would require of bonds to pay the trust-company certificates the sum of $5,240,679 04. No bonds or stock has been received by the trust company since that date. Holders of bonds who have not assented have applied to the trustees of the respective mortgages & received for their bonds their pro rata share of the proceeds of sale under foreclosure. Nearly all of all classes of bondholders & stockholders surrendered and signed the agreement.

Int. 11. State whether or not the Chicago & Rock Island Railroad Company had procured the necessary power under article 3 of said memorandum of 1 Nov., 1865, to consolidate with the new company to be incorported in Iowa, and whether said consolidation has actually taken place, when and under what name, and whether the bonds to be issued under article 4 were issued by the consolidated company and what date to they bear.

Answer. I believe I have fully answered this interrogatoy in answer to question No. 8.

Int. 12th. State how many of said bonds, if you have not already so stated, issued by the Miss. & Mo. Railroad, referred to in said meeting of 18th & 20 Oct., and said contract of 1 Nov., 1865, have been surrendered, and new bonds under article 4 of said contract delivered to the committee in lieu thereof, at the rates proposed up to this date, and how many of the old bonds of the Miss. and Mo. co., included in their various deeds of trust, are now outstanding.

Answer. I believe nearly all the bonds of the M. and M. company have been surrendered to the trustees in the several mortgages. There were some few outstanding at my latest advices, but the trustees
132 had the money in hand to pay their pro rata on presentation. None of the new bonds (except for their compensation) were de-

livered to the committee, but were paid out to the holders of trust-company certificates as presented to the C., R. I. & P. R. R. Co., and the amount so paid out has been stated, as near as I know.

Int. 13th. State whether or not the Mississippi and Missouri Railroad Company at the date of 18th October, , and up to this date was and is insolvent, and whether or not, on the completion of said sale, it did not dispose of all its property, abandon the road it undertook to build, and cease to exist, except for the purpose of closing its business.

Answer. I do not know of any property owned by the Mississippi and Missouri Railroad Company after the sale of 9th July, 1866, and I understand the company does not expect to build any more railroads; judgments are unpaid against the company, and under the state of facts I should infer that it was insolvent.

Int. 14. State whether or not Messrs. Stanton, Elliott, & Wilson has proceed' to perform the trusts imposed on them by the proceedings of the meetings of 18 & 20 Oct., 1865, and the subsequent contracts.

Answer. I have fully answered this interrogatory.

Int. 15th. Of what States are the trustees of the bonds and mortgages issued by the Miss. & Mo. Railroad Company, and referred to in the meetings of 18 & 20 Oct., 1865, citizens? And state whether they are within the jurisdiction of the State of Iowa, and have been since 1 July, 1866.

Answer. The trustees all reside in either the States of New York *and* Massachusetts. I know of no one of them having been in Iowa since July, 1866, except Mr. T. C. Durant, who passed through the State on a railroad train in October or November, 1866.

Int. 16. What amount of bonds were issued and delivered by The City of Davenport, Iowa, to the Mississippi and Missouri Railroad Company, in payment of subscriptions of stock, and guaranteed by the latter company; what amount of Scott County; what amount of The City of Muscatine; what amount of Muscatine County; what amount by The County of Johnson; and what amount by Iowa City?

Answer. The City of Davenport subscribed $75,000 to the capital stock of the M. & M. Railroad, and The County of Scott $50,000, and each issued bonds to the respective amounts, but those bonds were not taken by the company. The city and county sold the bonds and paid their subscription to the company in installments in the same manner substantially as individual stockholders paid. The City of Muscatine subscribed $130,000; The County of Muscatine subscribed $150,000; The County of Johnson $50,000; and The City of Iowa City, $50,000; and each issued bonds to the amount of their several subscriptions; and I think those bonds were delivered to the railroad company in payment of their respective subscriptions, but am not certain. All of the city and county bonds herein spoken of, I think were guaranteed by the said railroad company, except Muscatine County; and the amount of them guaranteed I cannot say.

Int. 17th. Look at the following bonds. (The witness is here shown bond No. 36, of The City of Davenport; bond No. 13, of Scott County; bond No. 75, of The City of Muscatine; and bond No. 83, of Iowa City, and the guaranty upon each; bond No. , of Johnson County, & bond No. , of Muscatine County.) Now state whether or not these bonds, coupons, & guaranty on each are severally part or parcels of the bonds referred to in your last answer, and state whether the bonds of
133 each county and city, and guaranty on them, are all alike, except in Nos. and amounts; and as to amount wherein do they differ?

Answer. These bonds are a part and parcel of the bonds referred to in former answer, and I think all of each separate city and county were alike, except that some were for $1,000, and some for $500, and were differently numbered.

Int. 18th. State whether or not the bonds of those cities and counties to the amounts above named were delivered to The Mississippi and Missouri Railroad Company in payment of stock subscriptions, and for what price *and* company sold and delivered said bonds, and what was done with the money received therefor.

Answer. I have stated that the bonds of Muscatine City, Iowa City, & Johnson County, were, as I thought, delivered to the company. I only know what the company d*one* with one parcel; that of Johnson County was sold to the contractors for building the road, for $42,500, they being either six or 7 per cent. bonds, while the others were 10 per cent. bonds; I cannot state further. All the moneys received by the company from stock subscriptions was expended in the construction of the road.

Int. 19. State what induced the said Mississippi and Missouri Railroad Company to guarantee the said bonds, and whether the said guaranty was executed after the bonds had been delivered to said company on payment of stock subscriptions.

Answer. I can hardly state the inducement. I suppose that it was believed that the bonds would sell better with the guaranty than without, and the cities and counties agreed that the stock should be issued to, and held by, the treasurer of the company, in trust for the security of the payment of the bonds. I cannot say whether the bonds of Muscatine City, Iowa City, and Johnson County had been taken by the company prior to guarantee. In the case of City of Davenport, and Scott County, they were guaranteed at the request of the said corporations before they were sold by them, respectively.

Cross-interrogatories on the part of the defendants:

Int. 1st. The M. & M. Railroad mortgages were foreclosed, and the road and franchise sold for non-payment of interest; why was not the interest paid on the bonded debt of the company?

Answer. Because the road did not earn enough to pay the interest, after deducting necessary repairs and operating expenses.

Int. 2. When did the board of directors of the M. & M. Railroad Company last declare a dividend, and why have they not semi declared a dividend?

Answer. The last dividend was declared in the spring of 1857. There has been no money applicable to dividends *semi* that time.

Int. 3d. This sixteen per cent. claimed by plaintiff in this suit, is that a dividend declared by the board of directors or executive committee of said M. & M. Railroad Company?

Answer. It is not.

Int. 4th. If it is not a dividend to the stockholders, declared by the proper officers of the road, explain what it is, and from what fund it is payable?

Answer. The M. & M. Railroad Company were bankrupt. They could not pay the interest on its bonded debt. The bondholders who were represented at the meeting of 18th & 20 October, , referred to, knew of the offer of five and a half millions of dollars for the M. & M. road
134 and franchises, and also knew that this offer was contingent on obtaining a speedy title to the road, as, unless the Rock Island could get the M. & M. road immediately so as to prosecute the road west,

they would not purchase or give that sum for it. They expressed the opinion that it would not sell for that sum at a forced public sale, & consequently they were anxious to close the trade, so far as they could do so. It was said that if the stockholders interposed defences and delays to the foreclosure of their mortgages, the title could not be obtained in time to satisfy the Rock Island Company. It was thereupon agreed at said meetings that the bondholders should deduct from the amounts due them on their bonds a certain pro rata, as shown by said proceedings, which would leave of the $5,500,000 a sum estimated to be sufficient to give each stockholder sixteen per cent. upon his stock. It was stated by bondholders in said meetings that this was proposed to be done to quiet the stockholders and prevent delay in foreclosing the mortgages and obtaining the title for the Rock Island Company.

Int. 5th. What was the inducing cause of the bondholders to give this much of the money to the stockholders?

Answer. I have already answered the question in my answer to the last. I can only further say, in answer to this question, that it was said in the meeting that the bondholders would probably realize a greater sum by this arrangement than they would if the mortgages were foreclosed and the property sold at a forced sale, and I suppose that was the inducement.

Int. 6th. You have stated that you are secretary and one of the directors of the Mississippi Railroad Company; will you state the number of shares of stock there was in the capital stock of said company?

Answer There was about thirty-four thousand shares of stock, each share representing one hundred dollars.

Int. 7th. Have you a copy of the original articles of incorporation and association of the Mississippi and Missouri Railroad Company? If so, annex a copy of the same to your deposition and mark it Exhibit No. 1.

Answer. I have a copy, and hereto annex the same, marked Exhibit No. 1.

Int. 8th. Did a majority of the stockholders, or did a majority of two-thirds in interest of the stockholders of the M. & M. Railroad Company, on or before the 1st day of Nov. 1865, request the board of directors or the executive committee to sell, transfer, & dispose of the estate, rights, and franchises of said company or any part thereof, or was any assent of said stockholders ever filed with said board or executive committee?

Answer. They did not. There is no record of such assent, and I have no knowledge of any such request or assent being given.

Int. 9th. You have stated that the bond & stockholders to a certain extent, that is, all the assenting bond and stock holders, deposited their bonds and stocks with the Union Trust Company of New York City, & received from said company a certificate of the fact; please state whether such certificates issued to stockholders were negotiable & passed by sale and delivery from one to another, and if you have one of those certificates annex it to your deposition.

Answer. I have seen a great many of the certificates issued by the trust company. They were negotiable & were bought and sold in the market. I hereto annex a blank form of the certificates and mark it Exhibit No. 2.

Int. 10. Do you know whether any of said trust-company certificates were sold & passed out of the hands of the original stockholders,
135 and do you know of such sales and transfers being made before the 9th of July, 1866?

Answer. I do know that many of said trust certificates were sold, and

passed out of the original stockholders, and I know that several such sales were made before the 9th of July, 1866.

Int. 11th. Do you know whether any of said trust certificates are now held by the original stockholders?

Answer. I do not know; it is impossible for me to tell who now owns them; I only know that they were selling freely in the market, but who owns them, or any of them, I cannot tell.

Further direct inter'ogatories on the part of the plaintiff;

Int. 1st. Was there any other or different agreement at said meetings of 18th & 20 Oct., 1865, referred to in your answer to the 4th cross-inter'ogatory, but that what is specified in the printing account thereof, already put in evidence by the plaintiff?

Answer. There was not. The conversations and speeches at the meetings were not reduced to writing. The resolutions & proposals of sale and terms of division were reduced to writing & are correctly set out in said printed paper.

Int. 2d. Furnish a copy of the certificate given to the bondholders.

Answer. I here annex it, marked Exhibit G.

EBENEZER COOK.

STATE OF IOWA, *Scott County, ss:*

Subscribed & sworn to by Ebenezer Cook, in my presence & before me, this 9th day of May, 1867.

[SEAL.]

LUDWIG BRUNING,
Notary Public, Scott Co., Iowa.

[U. S. rev. stamp, 5 cents, affixed and cancelled.]

(Endorsed:) Filed 16 May, '67.

W. G. WOODWARD, *Clerk.*

The further deposition of Ebenezer Cook is on the files of said cause in said clerk's office, but there is no record by endorsement thereon or otherwise in said office, showing when or by whom the same was filed; said deposition is in the words and figures following, to wit:

C. C. for Iowa.

HOWARD & ALS.
vs.
CITY OF DAVENPORT & OTHERS.

Further questions and answers of Ebenezer Cook taken and admitted by consent of Grant, for plaintiff, and Cook, for defendants who appear.

Question No. by plaintiff. In your direct answer you say you do not know that the bonds of Muscatine County were guaranteed. We here show to you bonds Nos. of the county of Muscatine, of which the following is a copy, with guarantee endorsed and signed by John A. Dix, president of Mississippi & Missouri Railroad Company, and A. C. Flagg, treasurer.

136 "STATE OF IOWA:

"*Bond of the county of Muscatine.*

"C, (No. 36.) ($1,000.)

"Be it known that The County of Muscatine, in the State of Iowa, owes

to George L. Stone, or bearer, the sum of one thousand dollars for money borrowed, the receipt whereof is hereby acknowledged, which sum the said county of Muscatine is obligated to pay on the first day of January, one thousand eight hundred & seventy-four, with interest on said sum of one thousand dollars, at the yearly rate of ten per cent. payable semi-annually at the office of Mess. E. W. Clark, Dodge & Co., in New York, and the faith of the said county of Muscatine is hereby pledged for the semi-annual payment of the interest and the ultimate redemption of the principal.

"In testimony whereof I, Arthur Washburn, judge of said county, have hereunto set my hand and affixed the seal of said county this 2nd day of January, A. D. 1854.

{ SEAL OF COUNTY OF MUSCATINE. }

"ARTHUR WASHBURN,
"*Co. Judge.*

"Attest:
"RICHARD CADLE, *Co. Clerk.*"

(Indorsed:)

"In consideration that The County of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said county in the Mississippi and Missouri Railroad Company the said railroad company hereby guarantees the prompt payment of the interest as it matured, and the eventual payment of the principal of this bond.

"In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed at New York, this day of , 185 .

{ SEAL OF THE M. & M. R. R. CO. }

"JOHN A. DIX, *President.*
"A. C. FLAGG, *Treasurer.*"

Now please examine these Muscatine County bonds & say whether the bonds and guaranty are genuine.

Ans. When I gave my evidence-in-chief I could find no record of such guaranty on the railroad company's books, and the stock was not deposited on security, but the bonds shown to me and the guarantee are genuine, and I find John A. Dix signed the guaranty as president of the company; still I cannot tell the amount actually guaranteed by the books of the company, and my memory does not recall it. I have been informed that the amount actually signed is one hundred and ten out of the one hundred & fifty thousand issued by the county. I know of no other way of ascertaining except by inspecting the bonds themselves.

Question No. 1 by defendant. In your direct examination you stated that about $552,000 of the consolidated company, The Chicago, Rock Island and Pacific Railroad Company, bonds had been retained to pay the 16 per cent. stock dividend; are you not mistaken as to the amount actually kept back? State fully what amount were retained & held by the company for the stockholders, & why any of them were paid out.

137 Ans. Since I made the statement referred to, I find from a more particular & recent examination of the books of the Chicago, Rock Island and Pacific Railroad Company, that the following sums have been actually paid out of the purchase-money of five and a half millions, for the Mississippi & Missouri Railroad:

1st mortgage, eastern division, $1,281,296 71, *a* 100....	$1,281,296 71
Land-grant mortgage, $3,937,180, *a* 70.....	2,756,026 00

2nd mortgage, eastern division, $400,000, *a* 80	320,000
Oskalo'sa division, $697,423 70, *a* 62½	424,639 81
2nd mortgage, construction, $694,451 85, *a* 30	208,335 55
	4,990,298 07
Amounts paid E. W. Dunham, F. Haven, & Thomas Walker, trustees	$12,000
Am't allowed Stanton, Elliott, & Wilson	21,000
Legal expenses, including att'y's fee here & in Iowa, costs, stamps on deed, &c., &c., up to this time, estimated	25,000
	$5,048,298 07
Purchase-money	5,500,000 00
Balance	$451,701 97

Of the amount of the purchase-money for the M. & M. Railroad, the C., R. I. & P. R. R. Co. have paid out the whole amount, except the said sum of four hundred and fifty-one thousand seven hundred and one dollars & $\frac{93}{100}$. See Exhibit A, hereto attached.

EBENEZER COOK.

STATE OF IOWA, *Scott County, ss*:

Subscribed & sworn to by the said Ebenezer Cook, in my presence, & before me, this 17th day of February, A. D. 1868.

[SEAL.] LUDWIG BRUNING,
Notary Public, Scott Co., Iowa.

"*Exhibit A.*"

Land-grant bonds	$3,617,000
Income bonds for do	254,000
Scrip for c'upons, convertible	13,870 85
C'upons due prior to 1863, convertible	17,309 15
C'upons due Nov. 8th, 1864	35,000
At 70 c	3,937,180 00
1st mortgage, 1st division	$1,000,000
Income bonds given for c'upons	216,000
Scrip for c'upons, convertible	14,513 28
Past due c'upons, convertible	2,900 93
C'upons July, 1864, & Jan'y, 1865	5,392 50
Int. to July 1st, 1865, 6 mo's, (both bonds)	42,490
At par	1,281,295 71
2nd mortgage, eastern division, at 80 c	$400,000 00
138 Oskaloosa division, 1st mortgage	$590,000
Income bonds given for c'upons	83,000
Scrip for c'upons, convertible	346 33
Past due c'upons, convertible	4,992 37
Past due c'upons of July, 1864, & Jan'y, 1865	1,085 00
At 62½ c	$679,423 70

2nd mortgage construction bonds	692,000	
Scrip convertible into same bonds	2,211	85
Past due c'upons of July, 1864, & Jan'y, 1865	240	00
At 30 c	$694,451	85

RECAPITULATION.

1st mortgage, eastern division, $1,281,296 71, *a* 100	$1,281,296	71
Land-grant mortgage, $3,937,180, *a* 70	2,756,026	00
2nd mortgage, eastern division, $400,000, *a* 80	320,000	00
Oskaloosa division, $679,423 70, *a* 62½	424,639	81
2nd mortgage construction, $694,451 85, *a* 30	208,335	55
	4,990,298	07
Amounts paid to E. W. Dunham, F. Haven, & Thomas Walker, trustees	12,000	00
Amount allowed Stanton, Elliott, & Wilson	21,000	00
Legal expenses, including attorney's fees here & in Iowa, costs, stamps on deed, &c., &c., up to this time, estimated	25,000	00
	$5,048,298	07
Purchase-money	5,500,000	00
Balance	$451,701	93

On the same day, to wit, on the sixteenth day of October, A. D. 1867, came the defendants, by Cook and Drury, their solicitors, and filed in said clerk's office the deposition of Blakely Wilson and John Elliott; which depositions are in the words and figures following, to wit:

U. S. circuit court of the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Depositions of witnesses produced, sworn, and examined, under oath, on behalf of the defendants, to be read in evidence on the trial of the above case, taken at the city of New York, on the twenty-seventh day of July, one thousand eight hundred and sixty seven, by consent of parties.

Charles Tracy appeared as counsel for the defendants.

Deposition of Blakeley Wilson.

Inter'ogatory 1st. What is your name, place of residence, and occupation?

139 Answer. Blakeley Wilson; I reside in Bergen, Hudson County, New Jersey; & am not in business.

Inter'ogatory 2nd. Were you present at the meeting of bondholders and stockholders of the Mississippi and Missouri Railroad Company, held at New York City, October 18 & 20, 1865?

Answer. I was.

Inter'ogatory 3rd. How large a portion of the bondholders of said company were represented at said meeting?

Answer. About one-half, viz., $3,435,500, out of a total of $6,861,754 64.

Inter'ogatory 4th. How large a portion of the stockholders of said company were represented at said meeting?

Answer. About one-third, viz, 11,675 shares, out of a total of 34,525.

Inter'ogatory 5th. Was the Mississippi & Missouri Railroad Company represented in said meeting as a party acting therein?

Answer. It was not.

Inter'ogatory 6th. For whom did said meeting act, and did it act or profess to act for said company, or on its behalf?

Answer. The meeting acted only for the individual bond and stock holders who were present or represented. It did not act nor profess to act in any manner for the Mississippi and Missouri Railroad Company, nor in its behalf.

Inter'ogatory 7th. What information had said meeting as to the amount of the bond debt of said company secured by mortgages on its railroad & other property, and what information had said meeting of the value of such railroad and property, & of the sum it would produce by a sale on the foreclosure of such mortgages, and of the sum which would be obtained for the same by a sale to the Chicago and Rock Island Railroad Company, and of what would be most for the interest of all parties interested as creditors or stockholders of said company?

Answer. The meeting was informed, & acted upon the information, that the amount of the bond debt of the Mississippi & Missouri Railroad Company, secured by mortgages on its railroad and other property, was about $6,900,000, or upwards; and that said railroad and property was worth about $5,500,000, and would not produce more than that sum by a sale or foreclosure, and that the Chicago and Rock Island Railroad Company was willing to purchase the same at that price if a title could be made speedily, not otherwise; and that it would be greatly for the interest of the bondholders to have a sale made for that price, and that no interest of the Mississippi & Missouri Railroad Company would suffer thereby; and that there was no chance for the last-named company to make the railroad produce any profit to the stockholders, or furnish any means to the Mississippi and Missouri Railroad Company to pay anything to any other creditors it might have.

Inter'ogatory 8th. What arrangement for the disposition of said railroad and other property was agreed upon by said meeting?

Answer. The meeting agreed upon an arrangement to effect a sale of the said railroad & property by means of a foreclosure of the mortgages thereon, and to ensure the payment by the Chicago & Rock Island Railroad Company therefor of $5,500,000, & appoint a committee of said meeting to arrange the terms of payment for the same, and to attend to the distribution thereof; such arrangement, so agreed on by said meeting, was not an arrangement or agreement of said Mississippi & Missouri Railroad Company, nor of a regular or corporate meeting of its stockholders, but merely an arrangement of the parties represented at said meeting. Said arrangement provided that a certain portion of
140 the proceeds should be distributed to the stockholders as a concession from the bondholders, who were entitled to retain the whole proceeds.

Inter'ogatory 9th. Why did said meeting concede to the stockholders a portion of the proceeds of the said railroad and other property?

Answer. Such concession was made as a gratuitous favor to the stock-

holders, to save them from a total loss, and to induce them to place no obstacles in the way of a speedy foreclosure.

Inter'ogatory 10th. Did said meeting act or assume to act for any stockholders not there represented, or for the said Mississippi and Missouri Railroad Company?

Answer. It did not.

Inter'ogatory 11th. Did you act on the committee appointed by said meeting to arrange the mode and terms of payment with the Chicago and Rock Island Railroad Company?

Answer. I did.

Inter'ogatory 12th. What inducements or considerations were laid before, or acted upon by, said Mississippi and Missouri Railroad Company in giving its assent to the arrangement made by said meeting?

Answer. The Mississippi and Missouri Railroad Company was under the necessity of operating said railroad, & doing all things necessary to maintain and preserve its character and franchises; and it was the duty of its directors to continue the same at a great burden of expense, without any prospect of advantage to the company, and it was inevitable that a foreclosure & sale would ultimately take place, and any delay of the same would involve said company in useless expense. The company, therefore, was interested to expedite the proceedings, and also to save those expenses in the meantime, both which ends were served by the arrangement made at said meeting, and the acquiescence of the company was formal only, & was known to be without any legal force or efficiency, but only expressed the approval of the directors. I was a director of said company at that time, & know the above to be the fact.

Inter'ogatory 13th. Does the Mississippi & Missouri Railroad Company remain indebted upon said mortgage bonds for any deficit of the proceeds of the sale of said railroad and other property, after the application thereto of such proceeds; and, if so, in what amount?

Answer. The amounts paid upon the mortgage bonds of the Mississippi & Missouri Railroad Company, out of the proceeds of said sale, is far less than the amounts due thereon, & the said bonds remain unpaid, & are debts of said company for the deficit, such deficit being about $2,000,000, which deficiency the decree in this cause requires the company to pay.

B. WILSON.

STATE OF NEW YORK,
City & County of New York, ss:

Subscribed and sworn to by Blakely Wilson, in my presence, & before me, this 27th day of July, 1867.

[SEAL.] WILLIAM W. PEARSON.
Notary Public.

[5 cts. U. S. revenue affixed and cancelled.]

Deposition of John Elliott.

Inter'ogatory 1st. What is your name, place of residence, and occupation?

141 Answer. John Elliott; reside in the city of New York, and member of the firm of Riggs & Co., bankers.

Inter'ogatory 2nd. Were you present at the meeting of bondholders and stockholders of the Mississippi and Missouri Railroad Company, at New York, October 18 & 20, 1865?

Answer. I was.

Inter'ogatory 3rd. How large a portion of the bondholders of said company were represented at said meeting?

Answer. From the report of the tellers appointed to ascertain the amount of bonds represented at said meeting it would appear that, of the total issue of $3,612,000, 1st mortgage land-grant bonds, $2,770,500 were represented; of $1,000,000, 1st mortgage, 1st division, $120,000 were represented; of $400,000, 2nd mortgage, 1st division, $133,000 were represented; of $590,000, 1st mortgage, Oskaloosa division, $151,000 were represented; of $695,000, 2nd mortgage construction bonds, $261,000 were represented. Parties present claimed to represent $507,000, 1st mortgage, 1st division bonds, but they do not appear to have reported them to the tellers.

Inter'ogatory 4th. How large a portion of the stockholders of said company were represented at said meeting?

Answer. From the report of said tellers it appears that of $3,452,000 of stock, 11,675 shares, or $1,167,500, was represented at said meeting.

Inter'ogatory 5th. Was the Mississippi & Missouri Railroad Company represented in said meeting as a party acting therein?

Answer. It was not; the officers of said company were present at said meeting, but were only consulted and advised with by the bond and stock holders as outside parties.

Inter'ogatory 6th. For whom did said meeting act; and did it act or profess to act for said company, or on its behalf?

Answer. It acted wholly and solely on its own behalf, and not for said company.

Inter'ogatory 7th. What information had said meeting as to the amount of the bond debt of said company secured by mortgages on its railroad and other property, and what information had said meeting of the value of such railroad and property, and of the sum it would produce by a sale on the foreclosure of such mortgages, and of the sum which could be obtained for the same by a sale to the Chicago and Rock Island Railroad Company, and of what would be most for the interest of all parties interested as creditors or stockholders of said company?

Answer. Several parties in attendance had prepared statements wherein the bonded indebtedness of the company, and devising plans for re-organization of the road. From these statements it appeared that the bonded debt of the company amounted to $6,857,000, or thereabouts, the said bonds being a lien on all the property of the company. The estimate' value of the property was about five and one-half millions of dollars, and it was generally allowed it would not bring more than this if sold under foreclosure, and if the Chicago and Rock Island would take the property at this price, it would be advisable to sell it to them. It had previously been ascertained, from the officers of the Mississippi and Missouri Railroad Company, that the Chicago and Rock Island company was willing to purchase the road, its lands, equipments, &c., at the price stated, provided a title could be obtained speedily, or without unnecessary delay, and that it would be greatly for the interest of the bondholders to dispose of it at this price, and that no interest of the Mississippi and Missouri Railroad Company could suffer thereby, as it was evident the road could not be made productive to the stock-
142 holders, or pay anything to its unsecured creditors, should it have any.

Inter'ogatory 8th. What arrangement for the disposition of said railroad and other property was agreed upon by said meeting?

Answer. The meeting agreed that the road, its lands, equipments,

&c., should be sold for five and one-half millions to the Chicago and Rock Island Railroad Company, and that the various mortgages should be foreclosed, and appointed a committee at said meeting to arrange the terms and mode of payment with the Chicago & Rock Island Railroad Company, and to receive from such bond and stock holders as approved of the sale on the terms stated their bonds and stock, and to distribute among such bond and stock holders such amount as they might be entitled to receive. This agreement was the act of the stock and bond holders, and not of the Mississippi and Missouri Railroad Company, and the meeting at which it was agreed was not a corporate one of the stockholders of said road, but solely of the parties represented at said meeting. The agreement provided that a certain amount should be distributed among the stockholders as a concession from the bondholders, who were entitled to the whole proceeds.

Inter'ogatory 9th. Why did said meeting concede to the stockholders a portion of the proceeds of said railroad and other property?

Answer. The concession was made as a gratuity from the bondholders to the stockholders, and to prevent any opposition that might be made by them to a speedy foreclosure of the mortgages; the prevailing idea of the bondholders was that the savings of interest in an early settlement of the matter would be equal to the amount they agreed to give the stockholders.

Inter'ogatory 10th. Did said meeting act, or assume to act, for any stockholder not there represented, or for the said Mississippi and Missouri Railroad Company?

Answer. Not at all.

Inter'ogatory 11th. Did you act on the committee appointed by said meeting to arrange the mode and terms of payment with the Chicago and Rock Island Railroad Company.

Answer. I did.

Inter'ogatory 12th. What inducements or considerations were laid before, or acted upon by, said Mississippi and Missouri Railroad Company, in giving its assent to the arrangement made by said meeting?

Answer. The impoverished condition of the Mississippi and Missouri Railroad was such that it could not pay the interest on its bonded debt, and, while the directors felt it incumbent on them to keep the road in good running order, and to do all in their power to maintain and preserve the character of the company, they at the same time felt they could not do so with any prospect of advantage to either the bond or stock holders; and, as a foreclosure of the various mortgages on the road had been threatened by the holders of the bonds secured by said mortgages, and was inevitable, & any resistance or delay would only put the company to useless expense, it was therefore deemed advisable by the directors of the Mississippi and Missouri Railroad Company that the wishes of the bond and stock holders, as expressed at their meeting of 18 & 20 October, 1865, should be complied with so far as they had power to do so; but the action of the said directors was regarded by them as a mere matter of form, as they were well aware they had no authority, as a board, to dispose of said premises, and their action only expressed a willingness on their part to carry out the views of the bond and stock holders, and an assurance to the Chicago & Rock Island Rail-
143 road, that, so far as they could act in the matter, they would do so. I was at the time a director in the said Mississippi and Missouri Railroad Company, and know the above statement to be correct.

Inter'ogatory 13th. Does the Mississippi and Missouri Railroad Company remain indebted upon said mortgage bonds for any deficit of the

proceeds of the sale of said railroad and other property, after the application thereto of such proceeds; &, if so, in what amount?

Answer. The road did not sell for enough to pay its mortgage indebtedness, and the balance on said mortgage bonds still remain unpaid, and are debts owing by said company. The deficiency between the decree and the amount to be received from the Chicago and Rock Island company is about two millions of dollars, which deficiency the decree requires the company to pay.

JOHN ELLIOTT.

STATE OF NEW YORK,
City & County of New York, ss:

Subscribed & sworn to by John Elliott, in my presence & before me, this 27th day of July, A. D. 1867.

[SEAL.] WILLIAM W. PEARSON, *Notary Public.*

[5-cents U. S. revenue affixed & cancelled.]

(Endorsed:) Filed Oct. 16, 1867.

W. G. WOODWARD, *Clerk.*

U. S. circuit court of the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Depositions of witnesses produced, sworn, and examined under oath, on behalf of the defendants, to be read in evidence on the trial of the above case, taken at the city of New York, on the 20th day of August, one thousand eight hundred and sixty-seven, by consent of parties. The counsel for the plaintiffs furnished cross-inter'ogatories to be submitted to the witnesses, and the same were put accordingly.

Deposition of Blakely Wilson.

First cross-inter'ogatory. You were present at said meetings of said stock and bond holders, and their proceedings are reduced to writing; were the persons who made a report to said meeting as the executive committee of said Mississippi and Missouri Railroad Company, really the executive committee of said railroad company or not; were not you, Blakeley Wilson, a member of the executive committee of said company, and was not that report signed by you or your order or consent?

Answer. I was a member of the executive committee of said railroad company, and, with the other members of that committee, was present at the meetings of bondholders & stockholders. We were there, however, only as individual stock and bond holders, and had no power or authority, nor did we undertake in any manner to act for or in behalf of the Mississippi and Missouri Railroad Company in any part of the proceedings of the meetings. By a resolution of the meeting of 18th
144 October, the executive committee were asked to state their opinion as to the advisability of selling the road. They did so in the communication published with the proceedings of the meeting of 20th October, & that communication was signed by me.

Second cross-inter'ogatory. Was John A. Dix, whose report or letter is annexed to the proceedings of said meeting, by a resolution therein

set forth, the real president of said railroad company, and do you mean to have us understand that either the real president wrote no such letter, or that the same is fictitious?

Answer. John A. Dix was the president of said railroad company; at the meeting of 20th October he stated that he would prepare a letter to the bond and stock holders, which, by resolution, was ordered to be published with the proceedings, but it was not read at the meeting. This is all I can say of my own knowledge regarding said letter.

Third cross-inter'ogatory. Did not the bondholders, or most of them, sign the agreement with Blakeley Willson, John Elliott, and George W. Stanton, of the date of first November, 1865, and was not the said agreement so signed by them executed by both the committee and those bondholders who signed it? Have not all or nearly all the bondholders of said Mississippi and Missouri Railroad Company, who signed said agreement, surrendered their bonds, & taken in lieu thereof, the bonds of the Chicago, Rock Island and Pacific Railroad Company according to the terms of said agreement?

Answer. The greater part of the bondholders signed the agreement with Stanton, Willson, & Elliott, committee, (not of the Mississippi and Missouri Railroad Company, but of the individual bond and stock holders who signed said agreement,) and the said agreement so signed by them was executed by both the said committee and the bondholders who signed it. Said agreement was not between the bondholders and the Mississippi and Missouri Railroad Company, but between its signers as individuals and the committee representing said signers and them only. Nearly all the bondholders who signed said agreement have surrendered their bonds, and taken in lieu thereof the bonds of the Chicago, Rock Island and Pacific Railroad Company according to the terms of said agreement, but they have not done or intended to do any act which would deprive them of their lien upon any assets of the Mississippi and Missouri Railroad Company for the balance still remaining unpaid of their claims against said company.

[SEAL.] B. WILSON.

STATE OF NEW YORK,
City and County of New York, ss:

Subscribed and sworn to by Blakeley Wilson, in my presence & before me this 28th day of August, A. D. 1867.

WILLIAM W. PEARSON,
Notary Public.

[5-cents U. S. revenue affixed & cancelled.]

Deposition of John Elliott.

First cross-inter'ogatory. You were present at said meetings of stock and bond holders, & their proceedings are reduced to writing; were the persons who made a report to said meeting as the executive committee of said Mississippi and Missouri Railroad Company really the executive committee of said railroad company or not; were not you, John
145 Elliott, a member of the executive committee of said company, and was not that report signed by you or your order or consent?

Answer. They were the executive committee of the Mississippi and Missouri Railroad Company, & made the report referred to in compliance with request of the meeting of the stock and bond holders of the Mississippi and Missouri Railroad Company, held on the 18th October, 1865, and my name was affixed to said report with my fullest consent.

Second cross-inter'ogatory. Was not John A. Dix, whose report or

letter is annexed to the proceedings of said meeting, by a resolution therein set forth, the real president of said railroad company, and do you mean to have us understand that either the real president wrote no such letter or that the same is fictitious?

Answer. John A. Dix was the real president of the Mississippi and Missouri Railroad Company, and made the remarks attributed to him at the meeting of the bond & stock holders of the Mississippi and Missouri Railroad Company, held on 20 October, 1865. The statement which he referred to as having been prepared, was not read at the meeting, and formed no part of its proceedings. I do not question the fact of said statement having been written by him.

Third cross-inter'ogatory. Did not the bondholders, or most of them, sign the agreement with Blakeley Wilson, John Elliott, and George W. Stanton, of the date of first November, 1865, and was not the said agreement so signed by them, executed by both the committee and those bondholders who signed it? Have not all or nearly all the bondholders of said Mississippi and Missouri Railroad Company who signed said agreement surrendered their bonds, and taken in lieu thereof the bonds of the Chicago, Rock Island and Pacific Railroad Company, according to the terms of said agreement?

Answer. The agreement of first November, 1865, was between the bond and stock holders of the Mississippi and Missouri Railroad Company, and George W. Stanton, jr., Blakeley Wilson, and John Elliott, who were appointed a committee at the meeting of the Mississippi and Missouri bonds and stock holders, held on 20th October, 1865, to arrange mode and terms of payment with the Chicago and Rock Island Railroad Company, and to make arrangements with some trust company to receive bonds and stock of the Mississippi and Missouri Railroad from parties assenting to the proposed arrangement, and in acting in said capacity the said Stanton, Wilson, and Elliott were entirely distinct and separate from the executive committee of the Mississippi and Missouri Railroad Company. Most of the bond and stock holders of the Mississippi and Missouri Railroad Company have signed the agreement between themselves and the said Stanton, Wilson, and Elliott, committee, who also signed it, and most all the bondholders of the Mississippi and Missouri Railroad Company have surrendered their bonds, and received the bonds of the Chicago, Rock Island & Pacific Railroad Company, but said bondholders did not intend thereby to relinquish their claims against the said Mississippi and Missouri Railroad Company, unless the agreement between themselves and the stockholders of the Mississippi and Missouri Railroad Company and the said Stanton, Wilson, and Elliott, committee, was fully carried out. In other words, they were entitled to more than they received, and any concession to the stockholders was a gratuity which, if subverted from the original purpose, should revert to themselves.

JOHN ELLIOTT.

146 STATE OF NEW YORK,
City and County of New York, ss:

Subscribed and sworn to by John Elliott, in my presence & before me, this 20th day of August, A. D. 1867.

[SEAL.] WILLIAM W. PEARSON,
Notary Public.

[Five cents U. S. revenue affixed and cancelled.]

(Endorsed:) Filed Oct. 16, 1867.

W. G. WOODWARD, *Clerk.*

On the same day, to wit, the 16th day of October, 1867, came the plaintiffs, by Grant & Smith, their solicitors, and filed in said clerk's office their exceptions to the depositions of Blakeley Wilson and John Elliott, which exceptions are in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD AND OTHERS
ag't
THE MISSISSIPPI & MISSOURI RAILROAD COMpany & others.

The plaintiffs except to the following parts of the deposition of John Elliott:

1st. To the answer of Elliot to the third inter'ogatoy, because the proceedings of said meeting are reduced to writing, and the amount of stock and bonds represented at said meeting are set forth in said proceedings, and the written paper is the best evidence; the question does not seek to show an error in said proceedings, as the witness' statement agrees with the paper-writing; he made his answer from it, he says so, and he merely corroborates a fact which is not disputed.

2nd. To the answer to the fourth inter'ogatory, the plaintiffs except for the same causes.

3rd. The plaintiffs except to the answer to the fifth inter'ogatory, because the record of the meeting referred to in the previous questions, and already in evidence, shows who was represented in the meeting, and, the facts not being disputed, it is a question of law what was the legal effect of the proceedings of the meeting.

4th. The plaintiffs except to the sixth question and answer, because the proceedings of the meeting being in writing, the court & not the witness is the property party to determine for whom the meeting acted, or professed to act. The opinion of the witness is a mere gratuity.

5th. The plaintiffs except to the seventh question and answer, because the proceedings of said meeting are in writing, and contain all the facts sought to be elicited by the question, and is the best evidence thereof. There is no suggestion by the witness of any fact outside of the proceedings of the meeting, which, being reduced to writing, is the best evidence.

6th. The plaintiffs except to the eighth question and answer, because the written proceedings of the meeting referred to show what arrangement was made for the disposition of the property, and that is the best evidence. The plaintiffs except to the latter part of the answer beginning at the words, "this arrangement was the act of the stock and bond holders," &c., down to the end of the answer, because it is not
147 responsive to the question, and is a gratuitous interpretation of a contract and a mistaken interpretation at that.

7th. The plaintiffs except to the 9th interrogatory and answer, because both questions and answer seek of the witness a legal interpretation of a paper writing which explains itself. The reason why such concession was made to the stockholders is totally immaterial. The answer of the witness shows that he don't know the law, and if he did, we insist that it shall be interpreted by the court and not by him.

8th. The plaintiffs except to the 10th question & answer, because the written proceedings of the meeting show for whom it assumed to act; that is the best evidence. The assistance of the witness in attempting to aid the court in the interpretation of the said proceedings is gratuitous.

9th. The plaintiffs except to the eleventh question and answer, because it appears from the written proceedings that the witness did not act in said committee, and his oral evidence proves it to be so; he proves a fact in writing not denied.

10th. The plaintiff excepts to the 12th question and answer, because the written proceedings of said meeting showed what inducements were laid before it & acted upon by the said company. The fact is not disputed and requires not the assistance of the witness. Also, to all the answer from the words "while the directors," &c., down to the end, the plaintiffs except, because it is a gratuity, not responsive to the question.

11th. The plaintiffs except to the 13th question and answer, because the question and answer both seek to give a legal opinion on an act, or to assist the court in interpreting the legal effect of an act. It may be proper enough for the witness to answer that when a debt is seven millions a payment of five millions leaves a balance; but the court probably can cipher that sum as well as the witness; but when the witness, with a view to interpret other facts which may discharge that debt, is laying down law, and not telling facts, the plaintiffs object to the part of the answer of the witness which says that the decree provides for the deficiency, because the decree shows for itself what it does provide for, and in that respect, when looked into by the court, will contradict him; and this is another reason why the court should not allow him to assist us with his legal conclusions.

GRANT AND SMITH,
Att'ys for Pl'ffs.

(Endorsed:) Filed Oct. 16, 1867.

W. G. WOODWARD, *Clerk.*

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
ag't
THE CITY OF DAVENPORT & OTHERS.

The plaintiffs except to the following parts of the answer of Blakeley Wilson to the cross-inter'ogatories of plaintiffs:

1st cross-inter'ogatory. To the following words to the first cross-inter'ogatory, "We were there, however, only as individual stock and bond holders, and had no power or authority, nor did we undertake in any manner to act for or in behalf of the Mississippi and Missouri Railroad Company, in any part of the proceedings of the meeting—"

1st. Because they are not responsive to the question.

2nd. Because the witness undertakes to give an opinion as to the legal effect of the proceedings of a meeting which are reduced to
148 writing, and the construction of which is a question of law for the court, and not for the witness.

Ans. to 1.

2nd cross-in. The plaintiff excepts to the following parts of the answer to the second cross-inter'ogatory, "But it was not read at the meeting—"

1st. Because it is not responsive to the question.

2nd. Because the proceedings of the meeting, in writing, show that it was not read, and the written paper is the best evidence.

Answer to 3rd cross-inter'ogatory. The plaintiff excepts to the following parts of the answer to the third cross-question:

To the words, "Not of the Mississippi and Missouri Railroad Company, but of the individual bond and stock holders," because they are not responsive to the question, but the useless sticking in of an opinion of the witness.

Also to the words, "Said agreement was not between the bondholders and the Mississippi and Missouri Railroad Company, but between the signers, as individuals; and the committee represented said signers and them only—"

Because they are not responsive to the question, because they undertake to give an opinion as to the legal effect of a contract.

Also to the words, "But they have not done, or intended to do, any act which would deprive them of their lien upon any assetts of the Mississippi and Missouri Railroad Company for the balance still remaining unpaid of their claims against said company—"

1st. Because they are not responsive to the question.

2nd. Because they undertake to give the opinion of the witness as to the legal effect of signing the contract referred to, which the witness had already given, which he ought to have known was the duty of the court and not the witness, and which opinion is obtruded upon the court—first, in the answer of the witness; second, in his direct evidence; and third, stuck in in response to a cross-question not asking it, for the purpose of influencing the judgment of the *judgment.*

GRANT,
For the Plaintiffs.

The plaintiffs also except to the following parts of the answer of John Elliott to the cross-questions:

Answer to 2nd cross-i. To the words in the answer to second cross-question, "The statement that he referred to was not read to the meeting, and formed no part of its proceedings—"

Because it is not responsive to the question, because it is the province of the court, and not the witness, to determine on reading the proceedings whether the statements formed part of their proceedings.

Answer to third cross-question. The plaintiffs except to the following words in the answer to third cross-question, "And in acting in said capacity the said Stanton, Willson, and Elliott, were entirely distinct from the executive of the Mississippi and Missouri Railroad Company—"

Because the words are not responsive to the question, but obtruded the opinion of the witness on the attention of the court.

Also to the words in said answer, "But the said bondholders did not intend thereby to relinquish their claims against the said Mississippi and Missouri Railroad Company, unless the agreement between themselves & the stockholders of the Mississippi and Missouri Railroad Company and the said Stanton, Willson, and Elliott, committee, was fully carried out; in other words, they were entitled to more than they received, and any concession to the stockholders was a gratuity,
149 which, if subverted from the original purpose, would revert to themselves—"

Because the words are not responsive to the question.

Because the witness does not state a fact, but gives an opinion in the legal effect of a contract; which opinion is not only a "gratuity," but incorrect law.

GRANT, *for Pl'ffs.*

(Endorsed:) Filed Oct. 16, 1867.

The deposition of James B. Edmonds, is on the files of said cause in said clerk's office, but there is no record by endorsement thereon or otherwise in said office showing when or by whom the same was filed. Said deposition is in the words and figures following, to wit:

U. S. circuit court for dist. of Iowa. In equity.

MARK HOWARD
vs.
GEO. W. STANTON ET AL.

The deposition of Ja's B. Edmonds, of Iowa City, Iowa, taken by consent of parties this 20th day of May, 1867, on the part of defendants.

Inter'ogatory 1st. What is your name, occupation, & place of residence?

Ans. My name is James B. Edmonds; occupation, attorney at law; residence, in Iowa City, in the State of Iowa.

Int. 2. Do you know the parties to this suit?

Ans. I have a slight acquaintance with def'ts Stanton and Elliott; do not know the pl'ff; only know the officers of def't's corporation.

Int. 3d. Look upon the blank certificate or receipt of the Union Trust Company of New York, marked Exhibit No. 2, to Ebenezer Cook's deposition in this cause, and state if you ever saw one or more of the same kind filled up and numbered and signed by said Union Trust Company. If yea, you may state what you know about such certificates or receipts having passed in the market as negotiable paper. State fully and about any particulars within you' knowledge, & whether you knew of any such transfers before the commencement of this suit.

Ans. I do know that, on the 25th or 26th of June, 1866, Iowa and Powesheik Counties severally surrendered $100,000 00 of stock in the M. & M. R. R. Company at the office of said Union Trust Company, in the city of New York, taking therefor certificates filled up and signed by the said Union Trust Co., or some of its officers, for various amounts, to suit the wants of the person so surrendering stock in said R. R. Co. In behalf of some persons who held claims Iowa and Poweshiek Counties, I made inquiries at said Union Trust Company's office, & was there told by its officers that said certificates were made to bearer, so they might be put in the market as negotiable paper by those desiring to do so, & that the holder would get the bonds of the Ch. & R. I. R. R. Co. After getting this and similar information of the officers of the Chicago and Rock Island Railroad Company, several of said certificates of Iowa County and Poweshiek County were purchased upon this assurance and information which I thus had obtained, & purchased some myself,
150 and sold the same again before the first day of July, 1866. I do not remember the amount which I purchased or saw purchased of the agent of said Iowa and Poweshiek Counties prior to July 1st last, but they amounted to several thousand dollars from each county, each having $16,000 of said certificates for sale, and offering, through their agents there, at New York, to sell the same at about 90 cents on the dollar, cash, or at par if the purchaser paid in the bonds or c'upons of said counties issued to aid in the construction of said M. & M. R. R. Co. In the cases of purchase made, so far as I personally knew, the purchasers were assured that they, as "bearer," would get the bonds mentioned in the certificates soon as they were prepared and ready for issue, and that upon the faith of such representation, and the reading of the cer-

tificates to "bearer," the purchases were made. I heard of several other sales of these certificates prior to 1st of July last, but was not personally witness to them.

JA'S B. EDMONDS.

Subscribed and sworn to before me 20th May, 1867.
W. G. WOODWARD, *Clerk.*

On this day, to wit, the twenty-third day of October, A. D. 1867, came George Bliss, Clark Durant, Charles W. Durant, William Elliott, Henry Vanderveer, Robert Murray, and Betsey Tracy, by J. B. Edmonds, their solicitor, and file their petition in said cause; which petition is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa. In chancery.

MARK HOWARD & JOHN WEBBER
vs.
THE CITY OF DAVENPORT, THE M. & M. Railroad Company, The Chicago, R. I. & Pacific R. R. Co., George W. Stanton, jr., John Elliott, and Blakeley Wilson.

Petition to be made parties & to participate in the fund.

To the said circuit court:

Your petitioners George Bliss, Clark Durant, Charles W. Durant, all citizens of the State of New York; William Elliott, a citizen of the State of Pennsylvania; Henry Vanderveer, a citizen of the State of New Jersey; and Robert Murray, a citizen of the State of Illinois, humbly represent that they each are the creditors of the Mississippi and Missouri Railroad Company, one of the defendants, which, is, and for more than a year last past has been, an insolvent corporation, and which over one year ago permitted all its property of every description, including its franchises, to be sold to pay a portion of its debts, to secure which a mortgage had been given by said company upon all its property and franchises.

That said M. & M. R. R. Co. are the debtors of your petitioners as the guarantors of county and city bonds owned and held by your petitioners, which were negociated and sold by said last-named R. R. co., and purchased by your petitioners respectively on the faith of the written guaranty of said R. R. co.

That said bonds were issued by county or city to said R. R. co. in payment for subscription to stock in said R. R. co. That said counties,
151 to wit, Johnson and Muscatine, and Iowa City, are all corporations under the laws of Iowa, and citizens thereof, and are all wholly insolvent.

That said county of Muscatine issued its bonds to said R. R. co. to the amount of $100,000 00; and said county of Johnson to the amount of $50,000 00; and said Iowa City to the amount of $50,000 00 all of which were guaranteed and negociated by said R. R. co. in manner aforesaid.

That of said bonds issued by said county of Johnson, your petitioner George Bliss is the owner of eighteen, and your petitioner Henry Vanderveer, of six, all of which are matured, and judgment of this court rendered thereon for both principal and interest, amounting to over thirty thousand dollars.

That of said bonds of Muscatine County, your petitioners Clark Du-

rant is the owner of fourteen; Charles W. Durant, of seven; Robert Murray, of six; and William Elliot, of six; each bond for one thousand dollars, with the accumulated interest thereon for several years.

That of said bonds of Iowa City, your petitioners Charles W. Durant is owner of fourteen; Clarke Durant, of nine; & George Bliss, of eight; each bond for $500, with several years accumulated interest thereon.

That against said Muscatine County & Iowa City judgments have been rendered in this court in favor of the said holders, respectively, for the interest c'upons maturing upon said bonds for several years, & down to January 1, 1867. And upon said judgments, or one of each kind, executions have been issued, and have been returned nulla bona, there being no property out of which said judgments could be satisfied.

That, after the sale of the property and franchises of said M. & M. R. R. Co. as aforesaid, and the agreement to appropriate a portion of the proceeds of said sale among the stockholders of said R. R. co., as set forth more particularly in the bill of complaint in the foregoing entitled cause, several creditors of said last-named railroad company, holders of the bonds of said city & counties, or other cities and counties, guaranteed by said R. R. co., filed bills in this court for equitable relief, and asking that said fund, about to be distributed among the said stockholders, be declared a fund which, in equity, ought to be applied to the payment of the debts of said R. R. co., including not only such as were in judgment, but other debts due and not yet due, of which bills that in the above-entitled cause was one, based upon guaranties of city or county bonds, all of same tenor.

That, at the May term of this court, 1867, your petitioners, by consent of both complainants and defendants, were made co-complainants by order of this court, in one of said causes, to wit, in cause No. 65, on equity calander, wherein Harriet Le Conte and Margaret I. Nisbet were complainants in a bill asking relief, the same as prayed for in foregoing entitled cause against same defendants; that your petitioners did not procure judgments against said railroad company, for the reason that said company had no property upon which judgments would be a lien; and *much* of their said claims *was* still immature, & because, by consent of said parties, plaintiff & defendant, and the consent of this court, your petitioners were allowed to become co-complainants and ask for same relief & upon the same basis as though such judgments had been rendered—the defendants not disputing the indebtedness, and willing that all creditors should share alike in any funds by them held, which might in equity, be adjudged to the creditors of said M. & M. R. R. Co.; that said cause, wherein your petitioners were complainants, was not
152 pressed to a hearing in consequence of an understanding or agreement made by the defendants with the attorneys of the several complainants in said several bills, that the said several causes should abide the trial and decree of one cause, to wit, the foregoing-entitled cause; that complainants and defendants in foregoing-entitled cause have permitted one Joseph Young, a creditor, on same footing with your petitioners, without judgment against said R. R. co., to become a co-complainant therein, &, since the last term of this court, to add the numbers and description of other bonds owned and held by other creditors of said R. R. co., with a view to sharing pro rata in the distribution of said fund, thereby enlarging the bill in foregoing-entitled cause, so as to include the several bonds of all those creditors who filed bills in this court, to reach said fund, save & except the said bonds of your petitioners, and also to include many bonds of other creditors upon

which no judgments were rendered, and upon which no bill was filed to reach said fund.

That said M. & M. R. R. Co. are the debtors upon city and county bonds, by them guaranteed as aforesaid, & more particularly described in the bill and amendments in foregoing cause, to an amount exceeding a half million of dollars, including the bonds of complainants and your petitioners, of which only a small portion is due, and of the amount so due only a few thousand dollars are reduced to judgment against said R. R. co., and only to the extent mentioned in complainant's bill, so far as known to your petitioners; that, on or about the 1st of January, 1856, said Johnson County and Iowa City, each issued $50,000 of bonds to said M. & M. R. R. Co., & prior to that time, said Muscatine County and City, & said Scott County and City of Davenport issued their said respective bonds aforesaid, all in payment of stock in said R. R. co., all of which stock was pledged for the payment of said bonds, and the fund of sixteen per cent. upon all of such stock would be applied by defendants to the payment of said bonds, only for the interposition of a court of equity, and the seizure of said entire fund to be applied to the payment of the debts of said R. R. co.; that all of said fund is equitably a trust fund which a court of equity will see first applied to the payment of the debts of said R. R. co., and to its stockholders, or pro rata to each; that said R. R. co., is practically dissolved, and is so considered and treated by all its stockholders, & at most has only a technical legal existence for finally closing its affairs, and the fund in the hands of the trustees arising from the sale of the property said R. R. co. should be, as your petitioners are advised *be*, by a court of equity applied to the payment of all creditors of said R. R. co. equally, even although a small portion only, or no portion whatever of their claims be in judgment.

Your petitioners further show, that neither said R. R. co. nor any defendant herein object to your petitioners or any creditor of said R. R. co. being made a co-complainant in this case, and sharing pro rata, according to the amount of their claim, with the complainants herein in any or all the money, bonds or property in their hands, which this court may order to be applied to the payment of any debt of said R. R. co.

Your petitioners further show, that their several bonds aforesaid, and the written guaranties thereon, by said M. & M. R. R. Co., are of the same tenor and effect as those set forth in complainants' bill.

That injunctions have been issued by State courts against the supervisors of said counties, and the city council of Iowa City, restraining them from laying any tax to pay said bonds, notwithstanding this court has rendered judgment on said bonds against said city &
153 counties so far as they have been due, and your petitioners are unable to collect their dues on said bonds, except from the guarantor, said R. R. co., having shown themselves entitled to a distributive share of said fund, the same as complainants, your petitioners reiterate the truth of the several allegations in said bill, and ask that they may adopt the said bill with these additional averments as their own, and pray that they be allowed to become co-complainants in said bill, and be allowed to prove the amount of their said claims with the said complainants, and to share pro rata in the said fund or proceeds thereof, upon the same terms and basis of those already joined as complainants, and that they have such other and further relief, the same as said complainants, or as to this court may seem equitable.

EDMONDS AND RANSOM,
For Petitioners.

STATE OF IOWA, *Polk County, ss:*

I, J. B. Edmonds, being duly sworn, say the foregoing petition is true, as I verily believe; that I, as one of the firm of Edmonds and Ransom, have procured the several judgments mentioned for petitioners, and for them procured their admission as co-complainants in said cause, No. 65, and that I am familiar with most of the facts above stated, better than petitioners themselves.

J. B. EDMONDS.

Subscribed & sworn to by J. B. Edmonds, before me this 23d day of October, 1867.

W. G. WOODWARD, *Clerk.*

(To the foregoing petition is added the following:)

In the same cause above-entitled, and by stipulation of parties, and, by leave of the court given in the above petition for intervention, Betsey Tracy avers that she is a citizen of the State of Illinois, and is the owner of eighteen bonds of the said county of Muscatine, of $1,000 each, of the same class of bonds issued by Muscatine County, and in above petition referred to; and three bonds of Iowa City of the same class and issue of bonds in above petition described, of $500 each; that over $20,000 is due on the said bonds of Muscatine County, and over $2,100 on said bonds of Iowa City; that all of said bonds are guaranteed by said M. & M. R. R. Co., and are now held by said Tracy; that said Tracy, by consent given in said petition, and makes the averments therein made by Bliss and others, & also asks the relief therein prayed, & asks that she may have a share of & participate in said fund as said other creditors do, & in proportion to her said interest.

EDMONDS AND RANSOM,
Atty's for Tracy.

(Endorsed:) Filed Oct. 23, 1827.

W. G. WOO'WARD, *Clerk.*

On the thirteenth day of May, A. D. 1868, came Volkert P. Douw, Christopher Y. Lansing, Jared F. Harrison, Joseph W. Clark, Harriet Le Conte, and Margaret I. Nisbet, by John N. Rodgers, their solicitor, and filed in the office of said clerk their petition, which was, by the court, ordered to be filed as of this day, to wit, the twenty-third day of October, A. D. 1867, which petition is in the words & figures following, to wit:

154 Circuit court of the United States, district of Iowa.

MARK HOWARD & ALS.
ag't
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY & ALS. } In equity.

To the judges of said circuit court:

Your orators, Volkert P. Douw, and Christopher Y. Lansing, citizens of the State of New York; Jared F. Harrison, also a citizen of the State of New York; and Joseph W. Clark, a citizen of the State of Massachusetts; and your oratrixes, Harriet Le Conte and Margaret I. Nisbet, citizens of the State of Georgia, come now and pray leave of said court to join in the above-entitled suit, and the bill of complaint therein, as

joint complainants with said Mark Howard and others, hereby offering, each for himself and herself, to contribute their just and ratable share of the expenses thereof.

And re-affirming and adopting as their own all and singular of the allegations and charges of the said bill of complaint, and of the amendments thereto by Joseph Young and others, they further, severally and respectively represent, and show to your honors as follows, to wit:

1st. The said Volkert P. Duow and Christopher Y. Lansing represent and aver that they are the owners and holders of eight certain bonds executed by the county of Muscatine, in the State of Iowa, dated January 2, A. D. 1854, each for the sum of one thousand dollars, with interest thereon at the rate of ten per cent. per annum, payable semi-annually, and the principal being payable January first, 1874, which said bonds are respectively numbered 20, 21, 22, 26, 48, 49, 50, & 84, together with unpaid c'upons or interest-warrants attached thereto. Said bonds are of the same class and in the same form precisely as the bonds of said Muscatine County, set forth in the petition or claim of Joseph Young, filed herein, (to which your orators, said Douw and Lansing, crave leave to refer, and to the copy of said bonds attached hereto,) and are in like manner, and in the same form as said bonds, so set forth in said Young's petition, & guaranteed in writing on the face thereof by the said Mississippi & Missouri Railroad Company.

Said Douw and Lansing further represent and show that said County of Muscatine has, for a series of years last past, wholly failed and neglected to pay the interest accruing upon said bonds, and that they have recovered in this court certain judgments against said county, on the due and unpaid coupons, and one of said judgments is also against the said railroad company, on its said guarantee. Said judgments are due and wholly unpaid, and as follows, to wit: A judgment in favor of said Douw and Lansing against said county, rendered October 24th, 1864, for the sum of two thousand and thirty-two dollars ($2,032) damages, and fifty-two $\frac{92}{100}$ dollars costs; a judgment in favor of said Christopher Y. Lansing against said county, rendered May 10, 1865, for fifteen hundred and seventy-three $\frac{50}{100}$ dollars damages, and fifty-three $\frac{55}{100}$ dollars costs.

And a judgment in favor of said Douw & Lansing against said county and said railroad company, rendered May 16th, 1867, for nineteen hundred and seven $\frac{35}{100}$ dollars damages, and thirty-six $\frac{75}{100}$ dollars costs.

That there is already due & unpaid to said Douw and Lansing upon said bonds, c'upons, & judgments, upwards of the sum of seven thousand dollars, and that the total amount of said bonds, judg-
155 ments, and unpaid c'upons, down to the present time, is about the sum of sixteen thousand dollars. That neither the said county or the said raiload company has any property which can be reached by execution.

2nd. And your orator, the said Jared F. Harrison, shows and represents that he is the holder and owner of eight certain other bonds of said County of Muscatine, of the same kind, class, and form precisely as those held by said Douw and Lansing, and in like manner guaranteed by said railroad company, and of the unpaid c'upons thereon, which said bonds are numbered respectively Nos. 86, 89, 90, 91, 92, 93, 96, & 97, and bear date also January 2nd, 1854, and are for the sum of one thousand dollars each, with interest at ten per cent. per annum, payable semi-annually, and are due and payable January 1st, 1874. That said county has, for a series of years now last past, failed & neglected to pay the accruing interest thereon, and there is now due and unpaid to your

orator for such accrued interest upwards of five thousand dollars, and that the total amount of said bonds, with accrued interest thereon, is about the sum of of fourteen thousand dollars.

And your orator, the said Joseph W. Clark, shows and represents that he is the holder and owner of thirteen (13) bonds made and issued by The County of Scott, in the State of Iowa, bearing date October 1st, 1853, & payable in fifteen years from date, each for the sum of five hundred dollars, with interest thereon at the rate of ten per cent. per annum, payable semi-annually, which said bonds are respectively numbered No. 9, 29, 33, 30, 34, 39, 42, 43, 44, 45, 46, 47, and 48, together with the unpaid interest c'upons or warrants thereon. Said bonds are of the same kind and class, and in the same form precisely as said bonds of Scott County, set forth in the petition of said Young to be made a party plaintiff herein, and are in like manner and form guaranteed by the Mississippi & Missouri Railroad Company. That the interest thereon, for a series of years last past, is due and unpaid, and the said Joseph W. Clark has recovered a judgment thereon, or on the c'upons therefor, in this court, which judgment was rendered against said Scott County October 19th, 1865, for twenty-two hundred and eighty-four dollars ($2,284 00) damages, and thirty-nine dollars costs, and is still due and wholly unpaid; and the total amount of interest due and unpaid on said bonds, including said judgment, is now about five thousand dollars, ($5,000,) and the total amount of principal & interest is about the sum of eleven thousand dollars, ($11,000.)

And the said Joseph W. Clark further represents and shows that he is also the owner and holder of a certain other bond, made and issued by The County of Johnson, in the State of Iowa, bearing date September 1st, 1853, and payable September 1st, 1863, being for the sum of one thousand dollars, ($1,000,) with interest at ten per cent. per annum, payable semi-annually, with the unpaid interest-warrants or c'upons belonging thereto; said bond is numbered twelve, (12,) and is of the same class and form precisely as the bonds of said Johnson County, set forth in the petition of said Young, to be made a party plaintiff herein, and is in like manner and form guaranteed by the Mississippi and Missouri Railroad Company. Said bond is now due & wholly uppaid, & said county and railroad company are indebted to your orator thereon in about the sum of fifteen hundred dollars for principal & interest.

4th. And your oratrix, the said Harriet Le Conte, represents and shows that she is the holder and owner of two certain bonds made and issued by The City of Muscatine, in the State of Iowa, bearing date December 31st, 1855, and payable January 1st, 1876, being each for
156 the sum of one thousand dollars, ($1,000,) with interest thereon, at the rate of ten per cent. per annum, payable semi-annually, together with the unpaid c'upons or interest-warrants thereon. That said bonds are numbered respectively Nos. one (1) and two (2,) and are of the same class and form precisely as the bonds of said city of Muscatine, set forth in the petition of said Young, to be made a party plaintiff herein; and are, in like manner and form, guaranteed by the Mississippi and Missouri Railroad Company.

That the interest on said bonds for several years last past is due and unpaid, and your oratrix, under the name of "H. L. Le Conte," has recovered a judgment against said City of Muscatine in this court for certain of the c'upons thereon, which judgment was rendered January 12th, 1864, for the sum of one thousand & twenty-eight & twenty-five one-hundredths dollars ($1,028 25) damages, and dollars costs, and is

in full force and wholly unsatisfied. That there is due to your oratrix for interest on said bonds, including said judgment, about the sum of two thousand dollars, and that the amount of the principal and interest thereon is about four thousand dollars.

And your said oratrix further represents & shows that she is also the holder & owner of fifteen certain bonds made and issued by The City of Davenport, in the State of Iowa, bearing date August 1st, 1853, and payable August 1st, 1865, with interest thereon at the rate of ten per cent. per annum, payable semi-annually. Said bonds are numbered respectively Nos. 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 80, 81, 104, 106, & 57, and are for the sum of five hundred dollars each, except said bond No. 57, which is for the sum of one thousand dollars. Said bonds belong to the same class and are of the same form precisely as the bonds of said city of Davenport, set forth in the petition of said Young, to be made a party plaintiff herein; and are, in like manner and form, guaranteed by the Mississippi & Missouri Railroad Company. Your oratrix is also the holder and owner of the due and unpaid c'upons or interest-warrants belonging to said bonds, and of a certain judgment in this court heretofore recovered by her under the name of "H. Le Conte," against said City of Davenport on certain of the c'upons on said bonds, together with other c'upons belonging to other and like bonds of said city, which judgment was rendered May 9th, 1866, for the sum of nineteen hundred and seventy dollars ($1,970) damages, & dollars costs, and is in full force, & wholly unsatisfied; and the total amount due to your oratrix, for principal and interest of said bonds, including said judgment, is about the sum of fourteen thousand dollars.

5th. And your oratrix, the said Margaret I. Nisbet, represents and shows that she is the holder and owner of six certain bonds, made and issued by said City of Davenport, also bearing date August 1st, 1853, and due August 1st, 1865, being numbered respectively Nos. 29, 30, 17, 18, 19, & 20, whereof Nos. 29 & 30 are for the sum of five hundred dollars, & the remainder for the sum of one thousand dollars each, all with interest at the rate of ten per cent. per annum, payable semi-annually; said bonds are of the same class and form, and in like manner guaranteed by said railroad company, as the bonds of said City of Davenport, set forth in the petition of said Young, to be be made a party plaintiff herein.

And the said Margaret I. Nisbet is also the owner and holder of the due and unpaid c'upons belonging to said bonds, except certain thereof which are included in the judgment of Harriet Le Conte, against The City of Davenport in this court, hereinbefore set forth, the same
157 having been sued on by the said Harriet Le Conte, with the consent of your oratrix, and for her benefit. That the amount due & owing to your said oratrix on said bonds and c'upons is about the sum of nine thousand and five hundred dollars, ($9,500.)

Wherefore your said orators and oratrixes pray to be joined as plaintiffs in this suit, and that an account may be taken herein of the several amounts due & owing to them respectively on the said bonds, c'upons, and judgments, as well for principal not yet matured, as for principal & interest already due; and that said fund or sum of five hundred and fifty thousand dollars, or thereabouts, in the bill of complaint of Mark Howard and al. herein mentioned, arising from the sale of the said Mississippi & Missouri Railroad, & wrongfully, and in fraud of your petitioners' rights, intended to be distributed among the stockholders in said railroad company, may be adjudged to be applicable in the first instance to pay the said bonds, c'upons, and judgments of your said

petitioners on the same footing, and, pari passu, with those belonging to the other plaintiffs herein, and for such other and further relief in all respects as to the court shall seem just and equitable, and as shall be awarded with said other parties plaintiff herein.

And your petitioners, as in duly bound, will ever pray, &c.

JOHN N. ROGERS,
Solicitor for said Petitioners.

(Endorsed:) Filed May 13th, 1868, as of Oct. 23d, 1867, by order of court.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the twenty-fifth day of October, A. D. 1867, came The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott & Blakeley Wilson, by John P. Cook, their solicitor, and file in the said clerk's office their answer to the petitions of Christopher Y. Lansing, Jared F. Harrison, George Bliss, Clark Durant, and others, intervening in this cause, which answer is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa. In chancery.

MARK HOWARD AND JOHN WEBBER *vs.* THE CITY OF DAVENPORT, THE M. & M. Railroad Company, The Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, jr., John Elliott, & Blakely Wilson, et als.	Answer to the bill of Christopher Y. Lansing, Jared F. Harrison, George Bliss, Clark Durant, et als., intervening in this action.

Bill filed Oct. 23, 1867.

The seperate answer of The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, John Elliott, and Blakeley Wilson, to the bill of complaint filed by the above plaintiff.

The said defendants, saving & reserving to themselves all and all manner of exception to the many errors, uncertainties, & imperfections in said bills of intervention filed in this cause October 25th, 1867, for answer thereto saith: That they have no knowledge except as in said bills contained that the said plaintiffs are the creditors of the Mississippi and Missouri Railroad Company; but they admit that said
158 railroad company is insolvent, and that its property and franchises were sold at judicial sale on foreclosure of mortgage to pay its debts.

They do not admit that the said M. and M. Railroad Company are the debtors of said plaintiffs, as guarantors of city and county bonds, or that said plaintiffs purchased said bonds on the faith of the written guaranty of said railroad company.

They admit that said city and county bonds were given in payment for subscription to stock in said railroad company, but they deny that said cities & counties are insolvent, but aver that they are abundantly able to pay all their just liabilities, and insist that before they can enforce payment from the said railroad company that they shall be required to exhaust their remedies against said cities and counties.

They further answer that, as to the ownership by said Bliss and said Vanderveer of Johnson County bonds, they have no knowledge except as contained in said bill, and require strict proof of the same.

That, as to the ownership by Clark Durant, Charles W. Durant, Robert Murray, and William Elliott, of the bonds of Muscatine County, they have no knowledge except as contained in said bill, and require proof of the same.

That, as to the ownership of bonds as alleged by said Volkert P. Douw, Lansing, Harrison, Jos. W. Clark, Harriet Le Conte, Nisbet, they have no knowledge, and require proof.

That, as to the ownership by Charles W. Durant, Clark Durant, George Bliss, of the bonds of Iowa City, they have no knowledge except as in said bill, and require proof of the same.

That, as to the judgments against Muscatine County and Iowa City, and the return of the execution nulla bona, these defendants have no knowledge except as in said bills, and therefore require proof of the same, and respectfully insist that, as against cities & counties in the State of Iowa, a return of nulla bona on an execution is not evidence of insolvency.

These defendants, further answering, admit that certain parties filed bills on the equity side of this court to subject a portion of the funds arising from the sale of the property and franchises of said railroad company to the payment of these debts, and that the plaintiffs in this suit have made co-complainants in cause No. 65.

That, as to the reasons why said plaintiffs did not obtain judgments on their bonds, and as to the agreement of parties to let in the bonds of these plaintiffs on an equal footing with other parties, these defendants have no knowledge except as contained in said bill, and therefore require proof of the same.

Said defendants, further answering, say that the said M. & M. Railroad Company are not the debtors to the several parties to an amount exceeding half a million of dollars, but they admit that said railroad company guaranteed a large amount of the bonds of cities and counties, but aver that their liability, (if any there be,) is a contingent liability, and insist that the said M. & M. Railroad Company are only liable in equity, after the said plaintiffs have exhausted all their legal remedies against the makers of said bonds.

Said defendants, further answering, deny that the fund called in said bill "the sixteen per cent." is a trust fund to be applied in payment of the debts of said M. & M. Railroad Company, but aver that the said fund belonged to the parties who were the holders of the bonds of said railroad company, and that said bondholders released so much of said fund, amounting to sixteen per cent., to the stockholders of the said company, which said fund is in the hands of three of these de-
159 fendants, to wit, Stanton, Elliott, and Wilson, as trustees, for distribution pro rata to the holders of the stock of said company, and the said trustees are ready & willing to execute their said trust, according to its terms, whenever permitted so to do by the order of this court.

Defendants, further answering, say that as to the allegation in said complainants' bill, that injunctions have been obtained by the State courts restraining and enjoining the officers of said cities and counties from paying the said bonds, saith, that true it is, that in some cases injunctions have been issued, but these defendants aver that said injunctions are wholly inoperative and null and void, as the Supreme Court of the United States has decided that said bonds so issued are valid, and that

the several cities and counties are liable on them, and have ordered and adjudged that they pay the same, and these defendants insist that the Supreme Court of the United States is paramount in its jurisdiction and authority.

And now having answered all the allegations in said bill contained, which they regard material to be answered unto, pray to be hence dismissed, with their reasonable costs in this behalf most unjustly sustained.

JNO. P. COOK,
Solicitor for Defendants named.

UNITED STATES OF AMERICA, *State of Iowa, ss:*

I, John P. Cook, upon oath, say that the foregoing answer is true, as I verily believe; that I am one of the solicitors for said defendants, & familiar with the matters therein stated.

Sworn & subscribed before me this 11th day of May, 1868, at Davenport, in the district of Iowa.

Witness my hand & seal the date aforesaid.

[SEAL.]

S. E. BROWN,
U. S. Com'r, District of Iowa.

(Endorsed:) Filed 25th Oct., 1867, by consent of parties.
W. G. WOODWARD, *Clerk.*

On this day, to wit, the twenty-sixth day of October, A. D. 1867, came the plaintiffs, by Grant and Smith, their solicitors, and the intervenors, by Edmonds and Ransom, their solicitors, and filed in said clerk's office their replication to the answer of the defendants, The Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, which replication is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD AND JOHN WEBBER *vs.* THE CITY OF DAVENPORT, THE M. & M. R. R. Co., The Chicago, Rock Island and Pacific R. R. Co., George W. Stanton, jr., John Elliott, and Blakeley Wilson.	Replication to answer.

Replication to answer of C., R. I. & P. R. R. Co., George W. Stanton, John Elliott, and Blakeley Wilson.

160 The complainants, and as well the intervening petitioners, Bliss, Clark Durant, C. W. Durant, William Elliott, Henry Vanderveer, and Robert Murray, and others, make replication to the answer above named and to any other answer herein filed, and say that said complainants and petitioners affirm the allegations set forth in their original bill of complaint & petitions, and deny each allegation set forth in said answer of defendant.

GRANT AND SMITH,
EDMONDS AND RANSOM,
For said Complainants & Petitioners.

(Endorsed:) Filed Oct. 26th, 1867.
WOODWARD, *Clerk.*

On this day, to wit, the thirtieth day of October, 1867, in the October term of said court, in the record of the proceedings of the said entitled cause, is the following entry, to wit:

MARK HOWARD, JOHN WEBBER, & JOSEPH YOUNG,
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI AND Missouri Railroad Co., The Chicago and Rock Island Railroad Company, The Chicago, Rock Island and Pacific Railroad Company, Geo. W. Stanton, jr., Jno. Elliott, Blakely Wilson, The County of Muscatine, The City of Muscatine, The County of Scott, & The City of Iowa City. } In equity.

This cause came on to be heard, Grant appearing for the plaintiff', Cook and Drury for the defendants, Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, and as to the other defendants, no counsel appeared, they having been duly served with process at least sixty days before the return term of the court, and being called came not, a decree is rendered against them by default; and now at this term George Bliss, Clark Durant, Charles W. Durant, William Elliott, Henry Vanderveer, and Robert Murray filed a bill to be made parties, and the cause is set down for hearing upon the bill of Mark Howard, John Webber, and the amendment thereto of Joseph Young, the answer of The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, the replications to said answers, the agreement of counsel as to the fact, the exhibits & depositions, and the court, upon argument had, doth order, adjudge, and decree that the sum of $552,400 00, agreed to be divided among the stockholders of the Mississippi and Missouri Railroad Company upon the sale of said railroad and its franchises to The Chicago and Rock Island Railroad, is a fund to be applied in the payment of the guaranteed debt by The Mississippi & Missouri Railroad Company, due and to become due to the plaintiffs before any part thereof can be divided among the stockholders, and that said fund is to be divided among said plaintiffs Howard, Webber & Young, and the interpleaders, Bliss, Durant, Elliott, Vanderveer, and Murray, and to ascertain the amount due to each of said claimants, Ashabel Berrett, of Davenport, is reported a master to report the number, amount, judgment, principal, & interest due, & principal not due, belonging to each of said claimants; and the defendants having alleged that of the said sum of $552,400 in bonds to be divided among the stockholders of said road, they had paid out the sum of $100,699 to bondholders and for expenses connected with the execution of
161 their trust under the sale, the said master is ordered to ascertain and report whether the same was paid out, and for what purpose, reporting each item in detail, and he is required to report on both of said subjects on or before the 1st of March next.

And as to the balance of said bonds, $451,703 93, of The Chicago, Rock Island & Pacific Railroad Company, so agreed to be paid to said stockholders, the interest on the sum of $552,400 from 1st January, 1866, to 1st July, 1866, at 6 per cent., and coupons for interest on $451,703 93, from 1st July, 1866, at 7 per cent., the said defendants are ordered, adjudged, and decreed to deliver the same to B. F. Allen, who

is appointed a receiver to receive said moneys, bonds, and c'upons, collect the c'upons now due, & as they become due, and hold the said moneys, bonds, and c'upons until the further order of this court, and, before entering on the discharge of his duties, the said Allen is required to give bonds to the plaintiffs and interpleaders in the penal sum of seven hundred thousand dollars, with sureties to be approved by the clerk of this court, conditioned faithfully to keep this money, bonds, and c'upons, and to pay them over as this court may direct, and for the general discharge of his duties as receiver, and this cause is continued until the next term of this court.

And it is further ordered that the plaintiffs and defendants have until the 1st December, 1867, to answer the interpleader of Bliss and others.

J. M. LOVE.

On this day, to wit, the first day of November, A. D. 1867, came the plaintiffs, by Grant, their solicitor, and filed in said clerk's office their answer to the petition of George Bliss and others in said cause; which answer is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD AND JOHN WEBBER
vs.
THE CITY OF DAVENPORT & OTHERS.

The plaintiffs in this suit, Mark Howard, John Webber, & Joseph Young, by leave of the court, make this joint and seperate answer to the petition of George Bliss and others, filed October 23, 1867.

That they knew nothing of the claims of the plaintiffs against The Mississippi & Missouri Railroad Company, and require proof thereof.

That as to the judgments of the said Bliss and others against The County of Johnson, it may be true; it is also true that said County of Johnson is perfectly solvent, is the principal in the debt secured, and perfectly able to pay the same.

That the plaintiffs in the suit of Howard & als. vs. Davenport and als. have no judgments nor claims against Johnson County, have never made that county a party to this suit.

That said plaintiffs Howard and Webber, on the 9th of July, 1865, commenced their suit against the makers and guarantors of the bonds held by them, they both having at that time judgments and executions returned nulla bona on said executions. That, in September following, they permitted Joseph Young, a creditor on similar bonds to their own, to become a party to this suit. That, at the same time that the said Howard and Webber commenced their suit, P. S. Benton, a judgment creditor against Iowa City, commenced a similar suit in his own
162 behalf, for Iowa City bonds, and Selden S. Walkly, a judgment creditor, against The City of Muscatine, commenced a similar suit against the same parties on his bonds; that in the claim of Benton vs. Iowa City were certain bonds held & owned by John A. Dix, president of the Mississippi & Missouri Railroad Company, who had judgment and execution returned against Iowa. That, after these suits were commenced, the plaintiff in the suit to which the said Bliss was a party, asked leave of the attorneys in that suit to become a party, and it was granted him; but it is not true that the plaintiffs in the suit of Howard and Webber,

Benton & Walkly, or either of them, ever consented that Bliss and associates should become a party to their suits or divide their fund. No application to become coplaintiffs were ever made to them or their attorneys, and if it had been made it would have been refused. Neither is it true that the defendants in the Howard, Webber, and Young suits ever consented that Bliss and others should be made plaintiffs in the suits of Le Conte & Nisbett, or that all creditors should share alike in the fund which was seized by Howard and Webber, who were then the only judgment creditors of the Mississippi and Missouri Railroad Company.

That the plaintiffs Howard, Webber, & Young made their agreement with Benton & Walkly & the defendants in writing; that their suits were all of the same date, & all equal and prior liens to any other creditors, and they joined no one else in the suits begun by them; that Joseph Young, who was made a complainant by consent of Webber and Howard, in September, 1865, was ready to join with them in July, 1865, but his name was omitted by his counsel, who were also counsel of Howard and Webber, and judgments have, since July, 1865, been rendered in this court for the mon*ies* due to Young and those he represents, against the said Mississippi and Missouri Railroad Company.

That the plaintiffs Howard, Webber, & Young first applied to this court for relief; that they, by their dilligence, seized & secured the fund now under the control of this court; that they really had a decree against the defendants at the December term of this court, and the entry was to be made in vacation. That the counsel of Howard, Webber, & Young, having received valuable assistance from the counsel of Le Conte & Nisbett, & having made their allegations for relief large enough to include the claims held by him, did invite the said counsel to transfer their claims to Young, so as to include them in his decree, and this they not only had the legal right to do, so long as the fund was sufficient, but it was their moral duty so to do. That the claims of Howard, Weber, and Young will consume the whole fund which they have by their dil*l*igence seized and recovered; that, at the time they began their suit, the plaintiffs Bliss and others were not in this court at all; that they denied the right of the plaintiffs' claim, and were the confederates of Stanton, Elliott, and Wilson, and The Chicago and Rock Island Railroad, in endeavoring to direct this dividend from the payment of the plaintiffs' claims, and the plaintiffs Howard have always, and now insist, that having, by their superior dil*l*igence, seized this dividend and secured jurisdiction in this court, they are entitled to be first paid the whole amount of their claims, as well those in judgment as those not in judgment.

GRANT,
For Howard, Webber, & Young.

(Endorsed:) Filed Nov. 1, 1867.

W. G. WOODWARD, *Clerk.*

163 The following paper, to wit, a stipulation signed by Grant, solicitor for plaintiff, and John P. Cook, one of the solicitors for defendants, appears upon the files in said entitled cause in said clerk's office, but there is no record thereon, by endorsement or otherwise, showing when or by whom the same was filed. Said paper is in the words and figures following, to wit:

U. S. C. C. for dist. Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

It is agreed in this cause that Howard, Webber, & Young, plaintiffs, may prove up their claim by affidavits, without producing bonds, and that if the plaintiffs succeed in the suit, they will claim of the defendants only such bonds, coupons, & judgments as they may actually produce and deliver up to the defendants, or assign to them, if in judgments.

GRANT, *for Pl'ffs.*
JNO. P. COOK.

On this day, to wit, the twenty-eighth day of February, A. D. 1868, came A. H. Bennett, the master named in the interlocutory decree in said cause, and filed in said clerk's office a report in said cause; which report is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, DISTRICT OF IOWA,
In the Circuit Court of the United States for said district, ss:

MARK HOWARD, JOHN WEBBER, AND JOSEPH Young,
vs.
CITY OF DAVENPORT, THE MISSISSIPPI & MISSOURI Railroad Co., The Chicago, Rock Island & Pacific Railroad Co., George W. Stanton, jr., John Elliott, Blakely Wilson, The County of Muscatine, The City of Muscatine, The County of Scott, The City of Iowa City, defendants, and Clark Durant, Charles W. Durant, George Bliss, William Elliott, Robert Murray, Henry Vanderveer, & others, interpleaders.

In equity. Master's report.

In pursuance of notice, & by agreement of counsel representing the parties, plaintiffs, defendants, & claimants, I met them at my office in Davenport, Scott County, Iowa, on the third day of February, 1868, at which time the hearing was postponed to the eleventh, and from that time to the 13th, of February, when it was agreed by said counsel that no bonds, c'upons, or transcripts of judgments need be produced at the hearing, but that the affidavits of counsel representing claimants should be sufficient evidence of the amount and the time of the recovery of all judgments, and the number, amount, and time when due, & when not due, of all bonds & coupons presented & owned by said claimants, and of the guaranteed payments of the same by The Mississippi and
164 Missouri Railroad Company, and that said judgments were obtained on past due c'upons attached to said guaranteed bonds; and upon this evidence I have ascertained, and hereby report, "the number, amounts, judgments, principal, & interest due, and principal not due, belonging to each of said claimants," and to other claimants, which the counsel, parties, plaintiffs, defendants, and claimants, have agreed shall be made parties to this suit by impleading, as will appear

from the annexed stipulations and agreements marked 1 & 2. The amounts due and not due to respective claimants will more fully and in detail appear in the annexed schedules, and which I state to be as follows, viz:

Name of claimants.		Amount of principal & interest due.	Amount of principal not due.	Total amount of principal & interest due and not due.
Clark Durant,	Schedule A	18,560 93	18,000	36,560 93
Charles W. Durant,	" B	10,128 14	14,000	24,128 14
Robert Murray,	" C	5,851 97	6,000	11,851 97
Henry Vanderveer,	" C	8,637 42	.....	8,637 42
William Elliott,	" D	5,239 70	6,000	11,239 70
George Bliss,	" E	34,166 04	4,000	38,166 04
Betsey Tracy,	" F	2,484 06	19,500	21,984 06
Harriet L. Conte,	" G	19,318 75	2,000	21,318 75
Joseph W. Clark,	" H	6,220 50	6,500	12,720 50
Volkert P. Douw & Christopher Y. Lansing,	" I	7,794 08	8,000	15,794 08
Margaret I. Nisbet,	" I	8,272 60	.....	8,272 60
Jared F. Harrison,	" J	6,522 48	8,000	14,522 48
Joseph Young,	" (14) K	336,428 90	226,000	562,428 90
Mark Howard,	" "	4,404 22	.....	4,404 22
John Webber,	" "	10,002 59	.....	10,002 59
		$484,032 38	$318,000	$802,032 38

I have allowed interest on all past due c'upons payable in New York, and upon all judgments recovered upon c'upons, at the rate of seven per cent., and upon all c'upons payable in this State at six per cent., and upon the principal of the bonds after maturity of total c'upons at the rate designated in said bond.

Before the expenses incurred by defendants in the execution of their trust, I report as follows, viz: It was agreed by counsel for claimants that the affidavit of Ebenezer Cook should be sufficient evidence of the amount expended by defendants in the execution of their trust.

And upon this evidence I state this amount to be as follows, viz:

Amount paid E. W. Dunham, F. Haven, and Thomas Walker.	$12,000
Amount allowed Stanton, Elliott, & Wilson.....	21,000
Legal expenses, attorneys' fees, costs, stamps on deeds, &c., &c., estimated	25,000
	$58,000

The above items are the only ones that have been furnished me, and I am therefore unable to report more in detail the items of said expenditures.

A. H. BENNETT,
Master and Referee.

Master's fees, $700.

DAVENPORT, *Feb.* 27, 1868.

165 No. 1.

Circuit court of the U. S., district of Iowa.

MARK HOWARD ET AL.
vs.
C., R. I. & P. R. R. ET AL. } Before A. H. Bennett, esq., referee.

STATE OF IOWA, *Scott County, ss:*

I, Charles T. Ransom, on oath, say that, as I am informed by J. B. Edmonds, and believe, Betsey Tracy is the owner of 18 Muscatine County bonds of one thousand dollars each, with c'upons annexed; c'upons $50 each; coupons of January, 1868, & July, 1867, past due, prior c'upons being in judgment. The numbers of said bonds I cannot now furnish, but can do so by the May term of this court. That she is also the owner of bonds Nos. 1, 2, & 3 of Iowa City, $500 each, drawing 10 % interest, c'upons of $50, due Jan. 1, 1867, & Jan. 1, 1868, annexed to said bonds and annexed to each bond; that on all said bonds interest is due in New York.

That said bonds were all guaranteed by the M. & M. R. R. Co., & are unpaid, & said c'upons above specified; that, on former c'upons on said bonds, judgment was obtained by Edmonds & Ransom, as attorney in said court, and said bonds are in our control as attorney' for said Betsey.

C. T. RANSOM.

Signed by T. C. Ransom & sworn to by him before me Febr'y 13, 1868.

A. H. BENNETT,
Master & Referee.

MARK HOWARD ET AL.
vs.
C., R. I. & P. R. R. CO. ET AL. } Before A. B. Bennett, esq.

It is stipulated that Betsey Tracy may file petition for intervention herein nunc pro tunc, on 18 bonds of $1,000 each of Muscatine County, & 3 bonds, Nos. 1, 2, & 3, of Iowa City, & that the same may be proven before referee A. H. Bennett, esquire, by affidavit of att'ys & without production of the bonds themselves or numbers.

No objection to the time of filing such petition, but same may be filed at any time before May term of said court, and said Tracy is to participate in this fund as if she were a party to the original bill of pl'ffs, & have the same standing in court & the same share in the benefits of the decree already made herein.

Feb. 13, '68.

GRANT AND SMITH,
Pl'ffs' Att'ys.
JOHN N. ROGERS,
Sol'r for Le Conte & als., Intervening Pl'ffs.

Protesting that none of the plaintiffs in this case are entitled to the fund sought to be subjected to plaintiffs' claim, I consent that Betsey Tracy may file her petition of intervention nunc pro tunc, reserving all legal rights that defendants may have in the case.

JNO. P. COOK,
Sol'rs for Def'ts except The M. & M. R. R. Co.

166 No. 2.

Circuit court of the United States, district of Iowa.

MARK HOWARD & ALS.
vs.
THE MISSISSIPPI & MISSOURI RAILROAD COMpany & als. } In equity.

It is hereby agreed in this case that Harriet Le Conte, Margaret I. Nisbet, Volkert P. Douw, Christopher Y. Lansing, Joseph W. Clark, and Jared F. Harrison may intervene in the same, and file petition accordingly, to be filed nunc pro tunc as of May 10th, 1867, claiming to join in the suit as bondholders, and join in the distribution of the fund, and that the order made at the October term, 1867, of ref'rence, shall be so amended as to provide for ascertaining & reporting the amounts due to said parties, & put them in all respects on the same footing as the other parties plaintiff in this case.

GRANT AND SMITH,
Pl'ffs' Att'ys.
EDMONDS & RANSOM,
For Bliss et al., Intervenors.

Protesting that none of the plaintiffs in this case are entitled to the fund sought to be subjected to the plaintiffs' claim, I consent that the foregoing-named plaintiffs file their petitions of intervention nunc pro tunc, reserving all legal rights that the defendants may have in the case.

JOHN P. COOK,
Sol'r for Def'ts except M. & M. R. R. Co.

Circuit court of the United States, circuit of Iowa. Decree at Oct. 7, 1868.

MARK HOWARD ET AL.
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILroad Co. et al. }

On hearing before A. H. Bennett, esquire, register, it is hereby stipulated that all objections to the right of George Bliss and others (who, by Edmonds & Ransom, their attorneys, have filed a petition for intervention herein) to intervene herein and participate in the fund in the hands of some of defendants or the receiver appointed by the court, is waived and withdrawn.

No appeal is to be taken from that part of the decree herein made, allowing such intervention or participating by the intervenors.

The answer filed by Howard et al. to the petition of the intervenors is withdrawn.

EDMONDS AND RANSOM,
For Bliss el al., Intervenors.
GRANT AND SMITH,
Pl'ff's Att'y.
JNO. N. ROGERS,
Sol'r for Le Conte & als., Intervening Pl'ffs.

167 *Muscatine County bonds.—Schedule A.*

Name of claimant.	No. of bond.	Amount of bond not due.	No. of c'upons due March 1, 1868.	Amount of c'upons past due.	Dates of maturity 1st & last c'upons.	Amount of the interest on c'upons to March 1st, 1868.	Interest on principal of bond after date of last c'upon.	Total amount of bonds, c'upons, & interest up to March 1, 1868.
Clark Durant	61	1,000	3	150	Jan'y 1, '67	6 99	16 67	1,173 66
	2	1,000	3	150	Jan'y 1, '68	6 99	16 67	1,173 66
	62	1,000	3	150		6 99	16 67	1,173 66
	63	1,000	3	150		6 99	16 67	1,173 66
	64	1,000	3	150		6 99	16 67	1,173 66
	65	1,000	3	150		6 99	16 67	1,173 66
	98	1,000	3	150		6 99	16 67	1,173 66
	99	1,000	3	150		6 99	16 67	1,173 66
	100	1,000	3	150		6 99	16 67	1,173 66
	30	1,000	2	200		8 00	16 67	1,224 67
	51	1,000	2	200		8 00	16 67	1,224 67
	53	1,000	2	200		8 00	16 67	1,224 67
	55	1,000	2	200		8 00	16 67	1,224 67
	59	1,000	2	200		8 00	16 67	1,224 67
		$14,000	37	$2,350		$102 91	233 38	16,686 29
IOWA CITY BONDS.								
Clark Durant	14	500	1	50	Jan'y 1, '68	58	8 34	558 92
	15	500	1	50	" "	58	8 34	558 92
	16	500	1	50	" "	58	8 34	558 92
	17	500	1	50	" "	58	8 34	558 92
	18	500	1	50	" "	58	8 34	558 92
	19	500	1	50	" "	58	8 34	558 92
	20	500	1	50	" "	58	8 34	558 92
	21	500	1	50	" "	58	8 34	558 92
		4,000	3	400		4 64	66 72	$21,157 65
Amount of Clark Durant judgments and interest								15,403 28
Amount of Clark Durant's claim								$36,560 93

Clark Durant's judgments.

Clark Durant vs. Muscatine County:		
Judgment for plaintiff 11th May, 1865		$6,770 85
Costs of suit		55 25
		$6,826 10
Interest at 7 0|0 to March 1, 1868		1,329 81
		$8,155 91
Clark Durant vs. Muscatine County:		
Judgment for plaintiff 16th May, 1867	$3,681 40	
Costs of suit	36 30	
Interest at 7 0|0 to March 1, 1868	206 02	
		3,923 72
Clark Durant vs. Same City:		
Judgment for plaintiff 18th May, 1867	$3,116 00	
Costs of suit	34 30	
Interest at seven per cent. to March 1, 1868	173 35	
		3,323 65
Amount of Clark Durant's judgments		$15,403 28

168 *Muscatine County bonds.—Schedule B.*

Name of claimant.	No. of bond.	Amount of bond not due.	No. of c'upons due March 1, 1868.	Amount of c'upons past due.	Dates of maturity first & last c'upons.	Amount of interest on c'upons to March 1st, 1868.	Interest on principal of bond after date of last c'upon.	Total amount of bonds, c'upons, & interest up to March 1st, 1868.
C. W. Durant	45	1,000	3	150	January 1st, '67	6 99	16 67	1,173 66
"	44	1,000	3	150	January 1, '68	6 99	16 67	1,173 66
"	43	1,000	3	150	" "	6 99	16 67	1,173 66
"	42	1,000	3	150	" "	6 99	16 67	1,173 66
"	41	1,000	3	150	" "	6 99	16 67	1,173 66
"	40	1,000	3	150	" "	6 99	16 67	1,173 66
"	88	1,000	3	150	" "	6 99	16 67	1,173 66
		7,000	21	1,050		48 93	116 67	8,215 62
IOWA CITY BONDS.								
C. W. Durant	27	500	1	50	January 1, 1868	58	8 34	558 92
"	28	500	1	50	" "	58	8 34	558 92
"	29	500	1	50	" "	58	8 34	558 92
"	30	500	1	50	" "	58	8 34	558 92
"	31	500	1	50	" "	58	8 34	558 92
"	32	500	1	50	" "	58	8 24	558 92
"	33	500	1	50	" "	58	8 34	558 92
"	34	500	1	50	" "	58	8 34	558 92
"	35	500	1	50	" "	58	8 34	558 92
"	36	500	1	50	" "	58	8 34	558 92
	37	500	1	50	" "	58	8 34	558 92
	38	500	1	50	" "	58	8 34	558 92
	39	500	1	50	" "	58	8 34	558 92
	40	500	1	50	" "	58	8 34	558 92
		14,000	35	1,750		57 05	233 45	16,040 50
Amount of Charles W. Durant's judgments & interest								8,087 64
Amount of Charles W. Durant's claims								$24,128 14

Charles W. Durant's judgments.

Charles W. Durant vs. Muscatine County:	
Judgment for plaintiff 16th day of May, A. D. 1867	$5,272 33
Costs of suit	40 80
Interest at 7 per cent. to March 1st, 1868	294 45
Charles W. Durant vs. Iowa City:	
Judgment for plaintiff 18th day of May, A. D. 1867	$2,305 00
Costs of suit	45 70
Interest at 7 per cent. to March 1st, 1868	129 36
	$8,087 64

Muscatine County bonds.—Schedule C.

Name of claimant.	No. of bonds.	Amount of bonds due.	Amount of bonds not due.	No. of c'upons due March 1, 1868.	Amount of c'upons past due.	Dates of maturity of first and last c'upons.	Amount of interest on c'upons to March 1st, 1868.	Interest on principal of bonds after date of last c'upon.	Total amount of bonds, c'upons, & interest up to March 1st, 1868.
Robert Murray	28	.....	1,000	3	150	January 1, '67	6 99	16 67	1,173 66
	29	.....	1,000	3	150	January 1, '68	6 99	16 67	1,173 66
	30	.....	1,000	3	150		6 99	16 67	1,173 66
	31	.....	1,000	3	150		6 99	16 67	1,173 66
	32	.....	1,000	3	150		6 99	16 67	1,173 66
	33	.....	1,000	3	150		6 99	16 67	1,173 66
			6,000	18	900		41 94	100 02	7,041 96
Judgment—Robert Murray vs. Muscatine County:									
Judgment for plaintiff 16th day of May, A. D. 1867									$4,519 14
Cost of suit									38 30
Interest at 7 per cent. to March 1st, 1868									252 57
Amount of Robert Murray's claim									$11,851 97

169 *Johnson County bonds.*

Henry Vanderveer.....	46	1,000	.....	2	70	Jan'y 1, '67.	$2 85	$11 67	1,084 52
	47	1,000	.....	2	70	Jan'y 1, '68.	2 85	11 67	1,084 52
				4	140		5 70	23 34	2,169 04
Judgment.—Henry Vanderveer vs. Johnson County:									
Judgment for plaintiff May 16, 1867.....									6,094 15
Costs of suit.....									34 60
Interest to March 1st, 1868, at 7 per cent.....									339 63
Amount of Henry Venderveer's claim.....									$8,637 42

Muscatine County bonds.—Schedule D.

Name of claimant.	No. of bond.	Amount of bonds not due.	No. of c'upons due March 1, 1868.	Amount of c'upons past due.	Dates of maturity of 1st & last c'upons.	Amount of interest on c'upons to March 1st, 1868, 6 per cent.	Interest on principal of bond after date of last c'upon.	Total amount of bonds, c'upons, & interest up to March 1st, 1868.
William Elliott.....	27	1,000	1	100	Jan'ry 1, '67...	7 00	16 67	1,123 67
	28	1,000	1	100	"	7 00	16 67	1,123 67
	29	1,000	1	100	"	7 00	16 67	1,123 67
	60	1,000	1	100	"	7 00	16 67	1,123 67
	24	1,000	1	100	"	7 00	16 67	1,123 67
	25	1,000	1	100	"	7 00	16 67	1,123 67
		6,000	6	600		42 00	100 02	6,742 02
Judgments.—W'm Elliott vs. Muscatine County:								
Judgment for plaintiff 12th day of May, A. D. 1865.....								$1,768 64
Costs of suit.....								37 00
Interest at 7 per cent.....								552 29
" William Elliott vs. Muscatine County:								
Judgment for pl'ff 18th day of October, A. D. 1867.....								863 64
Interest at 7 per cent.....								11 96
" John Newcomer, for William Elliott, vs. Muscatine County:								
Judgment for plaintiff 18th day of October, A. D. 1867.....								1,437 96
Interest at 7 per cent.....								37 19
Amount of W'm Elliott's claim.....								$11,239 70

Iowa City bonds.—Schedule E.

Name of claimant.	No. of bonds.	Amount of bonds not due.	No. of c'upons due March 1, 1868.	Amount of c'upons past due.	Dates of maturity of 1st & last c'upon.	Amount of interest on c'upons to March 1st, 1868.	Interest on principal of bond after date of last c'upon.	Total amount of bonds, c'upons, & interest up to March 1st, 1868.
George Bliss.....	73	500	1	50	Janua'y 1, 1868	58	8 33	588 91
" "	74	500	1	50	"	58	8 33	588 91
" "	75	500	1	50	"	58	8 33	588 91
" "	76	500	1	50	"	58	8 33	588 91
" "	77	500	1	50	"	58	8 33	588 91
" "	78	500	1	50	"	58	8 33	588 91
" "	79	500	1	50	"	58	8 22	588 91
" "	80	500	1	50	"	58	8 33	588 91
		4,000	8	400		4 64	66 64	4,471 28
Judgments.—George Bliss vs. Johnson County:								
Judgment for plaintiff 12th day of May, A. D. 1866.....								25,427 00
Costs of suit.....								40 00
Interest at 7 per cent.....								3,213 89
" George Bliss vs. Iowa City:								
Judgment for plaintiff, 16th day of May, A. D. 1867.....								4,708 00
Costs of suit.....								40 05
Interest at 7 per cent.....								265 89
Amount of George Bliss' claim.....								$38,166 04

170 *Muscatine County bonds.--Schedule F.*

Name of claimant.	No. of bonds.	Amount of bonds not due.	No. of c'upons due March 1, 1868.	Amount of c'upons past due.	Dates of maturity of first & last c'upons.	Amount of interest on c'upons to March 1st, 1868, at 6 per cent.	Interest on principal of bond after date of last c'upon.	Total amount of bonds, c'upons, & interest, up to March 1st, 1868.
Betsey Tracy...	Not known.	1,000	2	100	Jan'y 1, '67, Jan'y 1, 1868	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
		18,000	36	1,800		45 00	300 06	20,145 06
IOWA CITY BONDS.						7 per c't.		
Betsey Tracy...	1	500	2	100	Jan'y 1, '67 Jan'y 1, '68.	4 67	8 33	613 00
" " ...	28	500	2	100	" "	4 67	8 33	613 00
" " ...	3	500	2	100	" "	4 67	8 33	613 00
		1,500	6	300		14 01	24 99	
					Amount of Betsey Tracy's claim			$21,984 06

Recapitulation of claims represented by Edmonds and Ransom, solicitors.

Clark Durant—Schedule A:	
Bonds not due	$18,000 00
Amount of interest due	3,157 65
Judgments, principal & interest due	15,403 28
	$36,560 93
Cha's W. Durant—Schedule B:	
Bonds not due	$14,000 00
Amount of interest due	2,040 50
Judgments, principal & interest due	8,087 64
	24,128 14
Robert Murray—Schedule C:	
Bonds not due	$6,000 00
Amount of interest due	1,041 96
Judgments, principal & interest due	4,810 01
	$11,851 97
Henry Vanderveer—Schedule C:	
Bonds & interest due	2,169 04
Judgment & interest due	6,468 38
	$8,637 42
W'm Elliott—Schedule D:	
Bonds not due	6,000 00
Interest due	742 02
Judgments & interest due	4,497 68
	11,239 70
George Bliss—Schedule E:	
Bonds not due	4,000 00
Interest due	471 28
Judgments & interest due	33,694 76
	38,166 04
Betsey Tracy—Schedule F:	
Amount of bonds not due	$19,500 00
Interest due	2,484 06
	$21,984 06

171 Full amount of principal & interest due..... $85,068 26
" " " " not due..... 67,500 00

$152 568 26

Davenport City bonds.—Schedule G.

Name of claimant.	No. of bonds.	Amount of bonds due.	Amount of bonds not due.	No. of c'upons past due.	Amount of c'upons past due.	Date of maturity of first & last c'upon.	Interest on c'upons to March 1st, 1868, at 7 per cent.	Interest on principal of bond from date of last c'upon March 1, 1868.	Total amount of bonds, c'upons, & interest to March 1st, 1868.
Harriet Le Conte..	41	500	.....	9	225	Aug. 1, 61–Aug. 1, 65.	72 16	129 12	926 25
"	42	500	.....	9	225	" "	72 16	129 12	926 28
"	43	500	.....	9	225	" "	72 16	129 12	926 28
"	44	500	.....	9	225	" "	72 16	129 12	926 28
"	45	500	.....	9	225	" "	72 16	129 12	926 28
"	46	500	.....	9	225	" "	72 16	129 12	926 28
"	47	500	.....	9	225	" "	72 16	129 12	926 28
"	48	500	.....	9	225	" "	72 16	129 12	926 28
"	49	500	.....	9	225	" "	72 16	129 12	926 28
"	50	500	.....	9	225	" "	72 16	129 12	926 28
"	80	500	.....	9	225	" "	72 16	129 12	926 28
"	81	500	.....	9	225	" "	72 16	129 12	926 28
"	104	500	.....	9	225	" "	72 16	129 12	926 28
"	106	500	.....	10	250	" "	84 56	129 12	963 68
"	57	1,000	.....	9	450	" "	144 32	258 31	1,852 63
		8,000		136	3,625		1,166 96	2,065 99	
		Judgment against City of Davenport, May 9, 1866, for.....							1,970 00
"		Interest from May 9, 1866, at 7 per cent.....							248 22
		MUSCATINE CITY BONDS.							
"									
"	1	.....	1,000	8	400	July 4, '64–January 1, '68.	53 64	16 67	1,470 31
	2	.....	1,000	8	400		53 64	16 67	1,470 31
			2,000	16	800		107 28	33 34	
"		Judgment vs. City of Muscatine, May 12, 1864.....							1,028 25
		Interest from May 12th, 1864, to March 1st, 1868 *a* 7 per cent.....							273 71
		Amount of Harriet Le Conte's claim.....							$21,318 75

Scott County bonds.—Schedule H.—Due Oct. 1st, 1868.

Name of claimant.	No. of bond.	Amount of bonds not due.	No. of c'upons past due.	Amount of c'upons past due.	Date of maturity of first & last c'upon.	Interest on c'upons to March 1st, 1868, at 7 per cent.	Interest on principal from date of last c'upon.	Total of bonds, c'upons, and interest up to March 1, 1868.
Joseph W. Clark....	9	500 00	3	75 00	Oct. 1, '66–Oct. 1, '67.	4 79	20 83	600 62
" "	29	500 00	5	125	" 1, '65. " "	12 36	20 83	658 19
" "	30	500 00	5	125	" "	12 36	20 83	658 19
" "	33	500 00	5	125	" "	12 36	20 83	658 19
" "	34	500 00	5	125	" "	12 36	20 83	658 19
" "	39	500 00	5	125	" "	12 36	20 83	658 19
" "	42	500 00	4	100	Apr. 1, '66.	8 14	20 83	628 97
" "	43	500 00	4	100	" " "	8 14	20 83	628 97
" "	44	500 00	6	150	" '65. "	17 46	20 83	688 29
" "	45	500 00	4	100	" '66. "	8 14	20 83	628 97
" "	46	500 00	6	150	" '65. "	17 46	20 83	688 29
" "	47	500 00	4	100	" '66. "	8 14	20 83	628 97
" "	48	500 00	10	250	" '63. "	46 60	20 83	817 43
		6,500 00	66	1,650		180 67	270 69	

179				JUDGMENTS.				
"	"			Joseph W. Clark vs. County of Scott:				
....				Judgment for plaintiff, Oct. 19, 1865				2,284 00
				Interest from 19th Oct., 1865, at 7 per cent				378 38
				JOHNSON COUNTY BOND.				
		Am't of bond due.						
"	"	12	1,000	3	105	Sept. 1, '62-Sept. 1, '63.	36,76	315 00	1,456 76
				Amount due Joseph W. Clark				$12,720 50

Muscatine County bonds.—Schedule I.—Due January 1st, 1874.

Name of claimant.	No. of bond.	Amount of bonds due.	Amount of bonds not due.	No. of c'upons past due.	Amount of c'upons past due.	Dates of maturity of first & last c'upon.	Interest on c'upons to March 1st, 1868, at seven per cent.	Interest on principal from date of last c'upon.	Total of bonds, c'upons, judgments, and interest up to March 1st, 1868.
Volkert P. Douw and Christopher Y. Lansing.	20	.....	1,000	3	150	Jan'y 1, '67. Jan'y 1, '68.	6 99	16 67	1,173 66
" "	21	.....	1,000	3	150	" "	6 99	16 67	1,173 66
" "	22	.....	1,000	3	150	" "	6 99	16 67	1,173 66
" "	26	.....	1,000	3	150	" "	6 99	16 67	1,173 66
" "	48	.....	1,000	3	160	" "	6 99	16 67	1,173 66
" "	49	.....	1,000	3	150	" "	6 99	16 67	1,173 66
" "	50	.....	1,000	3	150	" "	6 99	16 67	1,173 66
" "	84	.....	1,000	3	150	" "	6 99	16 67	1,173 66
			8,000	24	1,200		55 92		
" "			Judgment vs. Muscatine County, Oct. 24, 1864						2,032 00
			Interest from Oct. 24, 1864, to March 1, 1868, at 7 per cent						476 90
" "			Judgment vs. Muscatine County, May 10, 1865						1,573 50
			Interest from date of judgment to March 1st, 1868, 7 per cent						309 32
" "			Judgment vs. Muscatine Co., May 16, 1867						1,907 35
			Interest from date of judgment to March 1, 1868						105 71
			Amount of V. P. Douw & C. Y. Lansing's claim						$15,794 08
			DAVENPORT CITY BONDS.						
Margaret I. Nisbet..	29	500		6	150	Aug. 1, '61. Aug. 1, '62. Aug. 1, '64. " '65.	48 11	129 13	827 24
" "	30	500		6	150	Aug. 1, '61. " '62. " '64. " '65.	48 11	129 13	827 24
" "	17	1,000		6	300	Aug. 1, '61. " '62. " '64. " '65.	96 22	258 31	1,654 53
" "	18	1,000		6	300	" '61. " '62. " '64. " '65.	96 22	258 31	1,654 53
" "	19	1,000		6	300	Aug. 1, '61. " '62. " '64. " '65.	96 22	258 31	1,654 53
" "	20	1,000		6	300	Aug. 1, '61. " '62. " '64. " '65.	96 22	258 31	1,654 53
		5,000		36	1,500		481 10	1,291 50	
			Amount of Margaret I. Nisbet's claim						$8,272 60

173 *Muscatine County bonds.—Schedule J.—Due January 1, 1874.*

Name of claimant.	No. of bond.	Amount of bonds not due.	No. of c'upons due.	Amount of c'upons due.	Date of maturity of first & last c'upon.	Interest on c'upons to March 1st, 1868, at 7 per cent.	Interest on principal from maturity of last c'upon.	Total of bonds, c'upons, & interest up to March 1st, 1868.
Jared F. Harrison.....	86	1,000	15	750	Jan. 1, '61. Jan. 1, '68.	192 45	16 67	1,859 12
"	89	1,000	14	700	July " '61. "	167 37	16 67	1,884 04
"	90	1,000	14	700	" " "	167 37	16 67	1,884 04
"	91	1,000	15	750	Jan'y 1, '61. "	192 45	16 67	1,959 12
"	92	1,000	15	700	July 1, '61. "	167 37	16 67	1,884 04
"	93	1,000	15	700	" "	167 37	16 67	1,884 04
"	96	1,000	15	700	" "	167 37	16 67	1,884 04
"	97	1,000	15	700	" "	167 37	16 67	1,884 04
		8,000	114	5,700		1,389 12	133 36	
		Amount of Jared F. Harrison's claim.....						$14,522 48

Recapitulation of claims represented by John N. Rogers, solicitor.

Harriet Le Conte's Schedule G.....	$21,318 75
Joseph W. Clark, Schedule H	12,720 50
V. P. Douw & C. Y. Lansing, Schedule I.....	15,794 08
Margaret I. Nisbet, " I.....	8,272 60
Jared F. Harrison, " T.....	14,522 48
	$72,628 41

Recapitulation of claims represented by John N. Rogers, solicitor, showing the amount of principal and interest due, & principal not due.

Harriet Le Conte, Schedule G:

Principal & interest due.....	$19,318 75
Principal not due.....	2,000 00
	$21,318 75

Joseph W. Clark, Schedule H:

Principal & interest due.....	6,220 50
" not due	6,500 00
	$12,720 50

Volkert P. Douw & Christopher Y. Lansing, Schedule I:

Principal & interest due.....	7,794 08
" not due.....	8,000 00
	$15,794 08

Marg'et J. Nisbet, Schedule I:

Principal & interest due.....	8,272 60

Jared F. Harrison, Schedule I:

Principal & int. due.....	6,522 48
" not due.....	8,000 00
	14,522 48

Full amount of principal & interest due.....	$48,128 41
" " " " not due.....	24,500 00
	$72,628 00

Name of claimant.	No. of bond.	Amount of bonds not due.	No. of c'upons due March 1, 1868.	Amount of c'upons past due.	Dates of maturity of c'upons.	Interest on c'upons to March 1, 1868, a 7 °/o.	Interest on principal of bond from date of last c'upon to March 1, 1868.	Total amount of bonds, c'upons, & interest to March 1, 1868.
Joseph Young.....	16	500	9	225	Oct. 1, '62. Oct. 1, '65. Apr. 1, '67. Oct. 1, '67.	49 58	20 83	795 41
	18	500	9	225	" "	49 58	20 83	795 41
	20	500	9	225	" "	49 58	20 83	795 41
	21	500	9	225	" "	49 58	20 83	795 41
	22	500	9	225	" "	49 58	20 83	795 41
	24	500	9	225	" "	49 58	20 83	795 41
	25	500	9	225	" "	49 58	20 83	795 41
	26	500	9	225	" "	49 58	20 83	795 41
	27	500	9	225	" "	49 58	20 83	795 41
	69	500	9	225	" "	49 58	20 83	795 41
	50	500	9	225	" "	49 58	20 83	795 41
	11	500	2	50	Apr. 1, '67. Oct. 1, '67.	2 31	20 83	573 14
	12	500	2	50	" "	2 31	20 83	573 14
	10	500	1	25	" "	73	20 83	546 56
	13	500	1	25	" "	73	20 83	546 56
	17	500	1	25	" "	73	20 83	546 56
	19	500	1	25	" "	73	20 83	546 56
	31	500	1	25	" "	73	20 83	546 56
	38	500	1	25	" "	73	20 83	546 56
	4	500	1	25	" "	73	20 83	546 56
	15	500	1	25	" "	73	20 83	546 56
	8	1,000	9	450	Oct. 1, '62. Oct. 1, '65. Apr. 1, '67. Oct. 1, '67.	96 16	41 66	1,590 83
	13	1,000	1	50	Oct. 1, '67.	1 46	41 66	1,093 12
	4	1,000	2	100	Apr. 1, '67. Oct. 1, '67.	4 62	41 66	1,146 28
	6	1,000	2	100	Apr. 1, '67. Oct. 1, '67.	4 62	41 66	1,146 28
	9	1,000	2	100	" "	4 62	41 66	1,146 28
	16	1,000	2	100	" "	4 62	41 66	1,146 28
	17	1,000	2	100	" "	4 62	41 66	1,146 28
	18	1,000	2	100	" "	4 62	41 66	1,146 28
	19	1,000	2	100	" "	4 62	41 66	1,146 28
	20	1,000	2	100	" "	4 62	41 66	1,146 28
	25	1,000	1	50	Oct. 1, '67.	1 46	41 67	1,093 13
	11	1,000	2	100	Apr. 1, '67. "	4 67	41 67	1,146 34
	5	1,000	1	50	"	1 46	41 67	1,093 13
	10	1,000	1	50	"	1 46	41 67	1,093 13
	12	1,000	1	50	"	1 46	41 67	1,093 13
	21	1,000	1	50	"	1 46	41 67	1,093 13
	22	1,000	1	50	"	1 46	41 67	1,093 13
	23	1,000	1	50	"	1 46	41 67	1,093 13
	14	1,000	2	100	Apr. 1, '67. "	4 67	41 67	1,146 34
	24	1,000	2	100	" "	4 67	41 67	1,146 34
Judgment against Scott County, May 18, 1867.....							$11,556 12	
Interest from May 18, 1867, a 7 °/o.....							635 91	
								12,192 03

IOWA CITY BONDS.

	83	500	4	200	Jan. 1, '65. Jan. 1, '68.	23 32	8 33	731 65
	84	500	4	200	" "	23 32	8 33	731 65
	85	500	4	200	" "	23 32	8 33	731 65
	86	500	4	200	" "	23 32	8 33	731 65
Jos. Young.....	87	500	4	200	Jan. 1, '65. Jan. 1, '68.	32 32	8 33	731 65
	88	500	4	200	" "	32 32	8 33	731 65
	89	500	4	200	" "	32 32	8 33	731 65
	90	500	4	200	" "	32 32	8 33	731 65
	91	500	4	200	" "	32 32	8 33	731 65
	92	500	4	200	" "	32 32	8 33	731 65
	61	500	2	100	Jan. 1, '67. Jan. 1, '68.	4 66	8 33	612 99
	62	500	2	100	" Jan. 1, '68.	4 66	8 33	612 99
	80	500	1	50	"	58	8 33	558 91
	73	500	11	550	Jan. 1, '58. "	198 88	8 33	1,257 21
	74	500	1	50	"	58	8 33	558 91
	75	500	1	50	"	58	8 33	558 91
	76	500	1	50	"	58	8 33	558 91
	77	500	1	50	"	58	8 33	558 91
	78	500	1	50	"	58	8 33	558 91
	79	500	1	50	"	58	8 33	558 91
	65	500	2	100	Jan. 1, '67. "	4 66	8 33	612 99
	64	500	2	100	" "	4 66	8 33	612 99

175	42	500	1	50	" "	58	8 33	558 91
	43	500	1	50	" "	58	8 33	558 91
	46	500	9	450	Jan. 1,'60. Jan. 1,'68.	131 20	8 33	1,089 53
	47	500	9	450	" "	131 20	8 33	1,089 53
	48	500	9	450	" "	131 20	8 33	1,089 53
	49	500	9	450	" "	131 20	8 33	1,089 53
	50	500	9	450	" "	131 20	8 33	1,089 53
	51	500	9	450	" "	131 20	8 33	1,089 53
	52	500	9	450	" "	131 20	8 33	1,089 53
	53	500	9	450	" "	131 20	8 33	1,089 53
Jos. Young	54	500	9	450	Jan. 1,'60. Jan. 1,'68.	131 20	8 33	1,089 53
	55	500	9	450	" "	131 20	8 33	1,089 53
	56	500	9	450	" "	131 20	8 33	1,089 53
	57	500	9	450	" "	131 20	8 33	1,089 53
	58	500	9	450	" "	131 20	8 33	1,089 53
	59	500	9	450	" "	131 20	8 33	1,089 53
	60	500	9	450	" "	131 20	8 33	1,089 53
	2	500	6	300	Jan. 1,'62. Jan. 1,'66. Jan. 1,'68.	73 48	8 33	881 81
	3	500	6	300	Jan. 1,'62. Jan. 1,'66. Jan. 1,'68.	73 48	8 33	881 81
	4	500	6	300	Jan. 1,'62. Jan. 1,'66. Jan. 1,'68.	73 48	8 33	888 81
	5	500	6	300	Jan. 1,'62. Jan. 1,'66. Jan. 1,'68.	8 16	8 33	881 81
	6	500	2	100	Jan. 1,'66. Jan. 1,'68.	8 16	8 33	616 49
	7	500	2	100	" "	8 16	8 33	616 49
	8	500	2	100	" "	8 16	8 33	616 49
	9	500	2	100	" "	8 16	8 33	616 49
	10	500	2	100	" "	8 16	8 33	616 49
	11	500	2	100	" "	8 16	8 33	616 49
	12	500	2	100	" "	8 16	8 33	616 49
	13	500	2	100	" "	8 16	8 33	616 49
	22	500	3	150	Jan. 1,'62. Jan. 1,'66. Jan. 1,'68.	29 74	8 33	688 07
	23	500	3	150	" " "	29 74	8 33	688 07
	24	500	3	150	" " "	29 74	8 33	688 07
	25	500	3	150	" " "	29 74	8 33	688 07
	26	500	2	100	" " "	8 16	8 33	616 49
	94	500	11	550	Jan. 1,'58. Jan. 1,'68.	198 88	8 33	1,257 21
	95	500	11	550	" "	198 88	8 33	1,257 21
	72	500	11	550	" "	198 88	8 33	1,257 21
	63	500	11	550	" "	198 88	8 33	1,257 21
Jos. Young	71	500	11	550	Jan. 1,'58. Jan. 1,'68.	198 88	8 33	1,257 21
	68	500	11	550	" "	198 88	8 33	1,257 21
	66	500	11	550	" "	198 88	8 33	1,257 21
	67	500	11	550	" "	198 88	8 33	1,257 21
	70	500	11	550	" "	198 88	8 33	1,257 21
	69	500	11	550	" "	198 88	8 33	1,257 21
	96	500	11	550	" "	198 88	8 33	1,257 21
	98	500	11	550	" "	198 88	8 33	1,257 21
	97	500	11	550	" "	198 88	8 33	1,257 21
Judgment against Iowa City, May 15, 1865								3,470 67
Interest from May 15, 1865, at 7 ⁰/₀								678 90
Judgment against Iowa City, May 15, 1867								6,794 19
Interest from May 15, 1867, at 7 ⁰/₀								377 83

MUSCATINE CITY BONDS.

Jos. Young	72	500	2	50	July 1,'67. Jan. 1,'68.	1 46	8 33	559 79
	77	500	2	50	" "	1 46	8 33	559 79
	86	500	2	50	" "	1 46	8 33	559 79
	87	500	2	50	" "	1 46	8 33	559 79
	88	500	2	50	" "	1 46	8 33	559 79
	100	500	2	50	" "	1 46	8 33	559 79
	84	500	2	50	" "	1 46	8 33	559 79
	68	500	2	50	" "	1 46	8 33	559 79
	67	500	2	50	" "	1 46	8 33	559 79
	66	500	2	50	" "	1 46	8 33	559 79
	82	500	2	50	" "	1 46	8 33	559 79
Joseph Young	85	500	2	50	July 1,'67. Jan. 1,'68.	1 46	8 33	559 79
	71	500	2	50	" "	1 46	8 33	559 79
	20	500	2	50	" "	1 46	8 33	559 79
	19	500	2	50	" "	1 46	8 33	559 79
	83	500	2	50	" "	1 46	8 33	559 79
	12	500	2	50	" "	1 46	8 33	559 79
	9	500	2	50	" "	1 46	8 33	559 79
	10	500	2	50	" "	1 46	8 33	559 79
	64	500	2	50	" "	1 46	8 33	559 79
	65	500	2	50	" "	1 46	8 33	559 79
	97	500	2	50	" "	1 46	8 33	559 79
	98	500	3	50	" "	1 46	8 33	559 79
	11	500	2	50	" "	1 46	8 33	559 79
	92	500	2	50	" "	1 46	8 33	559 79
	93	500	2	50	" "	1 46	8 33	559 79

176	94	500	2	50	"	"	1 46	8 33	559 79
	39	500	2	50	"	"	1 46	8 33	559 79
	79	500	2	50	"	"	1 46	8 33	559 79
	80	500	2	50	"	"	1 46	8 33	559 79
	81	500	2	50	"	"	1 46	8 33	559 79
	70	500	2	50	"	"	1 46	8 33	559 79
	17	500	2	50	"	"	1 46	8 33	559 79
	21	500	2	50	"	"	1 46	8 33	559 79
	22	500	2	50	"	"	1 46	8 33	559 79
	25	500	2	50	"	"	1 46	8 33	559 79
	26	500	2	50	"	"	1 46	8 33	559 79
	43	500	2	50	"	"	1 46	8 33	559 79
	44	500	2	50	"	"	1 46	8 33	559 79
Jos. Young	1	500	2	50	July 1,'67.	Jan. 1, 1868.	1 46	8 33	559 79
	15	500	2	50	"	"	1 46	8 33	559 79
	16	500	2	50	"	"	1 46	8 33	559 79
	28	500	2	50	"	"	1 46	8 33	559 79
	13	500	2	50	"	"	1 46	8 33	559 79
	14	500	2	50	"	"	1 46	8 33	559 79
	23	500	2	50	"	"	1 46	8 33	559 79
	24	500	2	50	"	"	1 46	8 33	559 79
	47	500	2	50	"	"	1 46	8 33	559 79
	48	500	2	50	"	"	1 46	8 33	559 79
	49	500	2	50	"	"	1 46	8 33	559 79
	50	500	2	50	"	"	1 46	8 33	559 79
	56	500	2	50	"	"	1 46	8 33	559 79
	57	500	2	50	"	"	1 46	8 33	559 79
	58	500	2	50	"	"	1 46	8 33	559 79
	59	500	2	50	"	"	1 46	8 33	559 79
	33	500	2	50	"	"	1 46	9 33	559 79
	34	500	2	50	"	"	1 46	8 33	559 79
	2	500	2	50	"	"	1 46	8 33	559 79
	3	500	2	50	"	"	1 46	8 33	559 79
	4	500	2	50	"	"	1 46	8 33	559 79
	5	500	2	50	"	"	1 46	8 33	559 79
	6	500	2	50	"	"	1 46	8 33	559 79
	31	500	2	50	"	"	1 46	8 33	559 79
	32	500	2	50	"	"	1 46	8 33	559 79
	35	500	2	50	"	"	1 46	8 33	559 79
	36	500	2	50	"	"	1 46	8 33	559 79
	37	500	2	50	"	"	1 46	8 33	559 79
Joseph Young	38	500	2	50	July 1,'67.	Jan. 1,'68.	1 46	8 33	559 79
	41	500	2	50	"	"	1 46	8 33	559 70
	42	500	2	50	"	"	1 46	8 33	559 79
	45	500	2	50	"	"	1 46	8 33	559 79
	46	500	2	50	"	"	1 46	8 33	559 79
	51	500	2	50	"	"	1 46	8 33	559 79
	52	500	2	50	"	"	1 46	8 33	559 79
	53	500	2	50	"	"	1 46	8 33	559 79
	54	500	2	50	"	"	1 46	8 33	559 79
	55	500	2	50	"	"	1 46	8 33	559 79
	27	500	2	50	"	"	1 46	8 33	559 79
	18	500	2	50	"	"	1 46	8 33	559 79
	40	500	2	50	"	"	1 46	8 33	559 79
	29	500	1	25		Jan. 1,'68.	29	8 33	559 79
	30	500	1	25		"	29	8 33	559 79
	99	500	19	475	Jan. 1,'59.	"	155 18	8 33	1,138 51
	73	500	2	50	July 1,'67.	"	1 46	8 33	559 79
	89	500	2	50	"	"	1 46	8 33	559 79
	90	500	2	50	"	"	1 46	8 33	559 79
	3	1,000	2	100	"	"	2 91	16 67	1,119 58
	48	1,000	2	100	"	"	2 91	16 67	1,119 58
	49	1,000	2	100	"	"	2 91	16 67	1,119 58
	75	1,000	2	100	"	"	2 91	16 67	1,119 58
	76	1,000	2	100	"	"	2 91	16 67	1,119 58
	77	1,000	2	100	"	"	2 91	16 67	1,119 58
	79	1,000	2	100	"	"	2 91	16 67	1,119 58
	80	1,000	2	100	"	"	2 91	16 67	1,119 58
	52	1,000	2	100	"	"	2 91	16 67	1,119 58
Jos. Young	53	1,000	2	100	July 1,'67.	Jan. 1,'68.	2 91	16 67	1,119 58
	51	1,000	2	100	"	"	2 91	16 67	1,119 58
	19	1,000	2	100	"	"	2 91	16 67	1,119 58
	20	1,000	2	100	"	"	2 91	16 67	1,119 58
	23	1,000	2	100	"	"	2 91	16 67	1,119 58
	22	1,000	2	100	"	"	2 91	16 67	1,119 58
	27	1,000	2	100	"	"	2 91	16 67	1,119 58
	26	1,000	2	100	"	"	2 91	16 67	1,119 58
	9	1,000	2	100	"	"	2 91	16 67	1,119 58
	28	1,000	2	100	"	"	2 91	16 67	1,119 58
	17	1,000	2	100	"	"	2 91	16 67	1,119 58
	74	1,000	2	100	"	"	2 91	16 67	1,119 58
	24	1,000	2	100	"	"	2 91	16 67	1,119 58
	7	1,000	2	100	"	"	2 91	16 67	1,119 58
	6	1,000	2	100	"	"	2 91	16 67	1,119 58
	18	1,000	2	100	"	"	2 91	16 67	1,119 58
	10	1,000	2	100	"	"	2 91	16 67	1,119 58
	25	1,000	2	100	"	"	2 91	16 67	1,119 58
	21	1,000	2	100	"	"	2 91	16 67	1,119 58

177	11	1,000	2	100	"	"	2 91	16 67	1,119 58
	12	1,000	2	100	"	"	2 91	16 67	1,119 58
	72	1,000	2	100	"	"	2 91	16 67	1,119 58
	29	1,000	2	100	"	"	2 91	16 67	1,119 58
	5	1,000	2	100	"	"	2 91	16 67	1,119 58
	13	1,000	2	100	"	"	2 91	16 67	1,119 58
	68	1,000	2	100	"	"	2 91	16 67	1,119 58
	71	1,000	2	100	"	"	2 91	16 67	1,119 58
	78	1,000	2	100	"	"	2 91	16 67	1,119 58
Joseph Young	69	1,000	2	100	"	"	2 91	16 67	1,119 58
	70	1,000	2	100	"	"	2 91	16 67	1,119 58
	14	1,000	21	1,050	Jan. 1, '58	"	397 68	16 67	2,446 35
	15	1,000	21	1,050	"	"	397 68	16 67	2,446 35
	16	1,000	21	1,050	"	"	397 68	16 67	2,446 35
	46	1,000	21	1,050	"	"	397 68	16 67	2,446 35
	55	1,000	2	100	July 1, '67—Jan. 1, '68		2 91	16 67	1,119 58
	65	1,000	2	100	"	"	2 91	16 67	1,119 58
	73	1,000	2	100	"	"	2 91	16 67	1,119 58
	54	1,000	2	100	"	"	2 91	16 67	1,119 58
	66	1,000	2	100	"	"	2 91	16 67	1,119 58
	67	1,000	2	100	"	"	2 91	16 67	1,119 58
	56	1,000	2	100	"	"	2 91	16 67	1,119 58
	57	1,000	2	100	"	"	2 91	16 67	1,119 58
	58	1,000	2	100	"	"	2 91	16 67	1,119 58
	59	1,000	2	100	"	"	2 91	16 67	1,119 58
	60	1,000	2	100	"	"	2 91	16 67	1,119 58
	61	1,000	2	100	"	"	2 91	16 67	1,119 58
	62	1,000	2	100	"	"	2 91	16 67	1,119 58
	63	1,000	2	100	"	"	2 91	16 67	1,119 58
	64	1,000	2	100	"	"	2 91	16 67	1,119 58
	40	1,000	2	100	"	"	2 91	16 67	1,119 58
	12	1,000							1,000 00
	Estimated interest on above bond No. 12								75 83
Joseph Young	Judgment against Muscatine City, Oct. 15, 1864								7,659 83
	Interest from Oct. 15, 1864, at 7 % to M'ch 1, 1868								1,811 12
" "	Judgment against Muscatine City, May 16, 1867								57,605 16
	Interest on same from May 16, 1867, a 7 % to M'ch 1, '68								319 28
" "	Judgment against Muscatine City, May 16, 1864								5,256 74
	Costs								107 00
	Interest from May 16, 1864, at 7 % to March 1, 1868								1,423 67
" "	Judgment against Muscatine City, May 16, 1864								3,857 74
	Costs								50 00
	Interest from May 16, 1864, to March 1, 1868, at 7 %								1,037 83
" "	Judgment against Muscatine City, May 16, 1864								3,745 75
	Costs								50 00
	Inter'st from May 16, 1864, to March 1, 1868, at 7 %								1,007 45
" "	Judgment against Muscatine City, May 16, 1864								9,095 00
	Costs								50 00
	Inter'st from May 16, 1864, to March 1, 1868, at 7 %								2,427 22
" "	Judgment against Muscatine City, May 15, 1867								33,399 59
	Costs								50 00
	Interest from May 15, 1867, to March 1, 1868, at 7 %								1,853 65
									373,250 00

Muscatine County bonds.—Schedule K.

Name of claimant.	No. of bond.	Amount of bond not due.	No. of c'upons due March 1, 1868.	Amount of c'upons past due.	Dates of maturity of c'upons.	Interest on c'upons to March 1, 1868.	Interest on principal of bonds from date of last c'upon to March 1, 1868.	Total amount bonds, c'upons, & interest to March 1, 1867.
Bro't forward	...	$168,000	...	...	...	...	...	$373,250 99
Joseph Young	5	1,000	7	700	Jan. 1, '62. Jan. 1, '68	155 19	16 67	1,871 86
	41	1,000	7	700	" "	155 19	16 67	1,871 86
	43	1,000	7	700	" "	155 19	16 67	1,871 86
	20	1,000	7	700	" "	155 19	16 67	1,871 86
	21	1,000	7	700	" "	155 19	16 67	1,871 86
	46	1,000	7	700	" "	155 19	16 67	1,871 86
	42	1,000	7	700	" "	155 19	16 67	1,871 86
	26	1,000	7	700	" "	155 19	16 67	1,871 86
	52	1,000	7	700	" "	155 19	16 67	1,871 86
	54	1,000	7	700	" "	155 19	16 67	1,871 86
	56	1,000	7	700	" "	155 19	16 67	1,871 86
	57	1,000	7	700	" "	155 19	16 67	1,871 86
	58	1,000	7	700	" "	155 19	16 67	1,871 86

178	2	1,000	7	700	"	"	155 19	16 67	1,871 86
	16	1,000	7	700	"	"	155 19	16 67	1,871 86
	0	1,000	7	700	"	"	155 19	16 67	1,871 86
	34	1,000	15	750	Jan. 1, '61.	"	192 45	16 67	1,959 12
	35	1,000	15	750	"	"	192 45	16 67	1,959 12
	36	1,000	15	750	"	"	192 45	16 67	1,959 12
	37	1,000	15	750	"	"	192 45	16 67	1,959 12
	38	1,000	15	750	"	"	192 45	16 67	1,959 12
	39	1,000	15	750	"	"	192 45	16 67	1,959 12
Joseph Young	87	1,000	15	750	Jan. 1, '61—Jan. 1, '68		192 45	16 67	1,959 12
	18	1,000	14	700	July 1, 61.	"	167 37	16 67	1,884 04
	3	1,000	14	700	"	"	167 37	16 67	1,884 04
	4	1,000	14	700	"	"	167 37	16 67	1,884 04
	5	1,000	14	700	"	"	167 37	16 67	1,884 04
	6	1,000	14	700	"	"	167 37	16 67	1,884 04
	7	1,000	14	700	"	"	167 37	16 67	1,884 04
	8	1,000	14	700	"	"	167 37	16 67	1,884 04
	9	1,000	14	700	"	"	167 37	16 67	1,884 04
	10	1,000	14	700	"	"	167 37	16 67	1,884 04
	11	1,000	14	700	"	"	167 37	16 67	1,884 04
	12	1,000	14	700	"	"	167 37	16 67	1,884 04
	13	1,000	14	700	"	"	167 37	16 67	1,884 04
	14	1,000	14	700	"	"	167 37	16 67	1,884 04
	15	1,000	14	700	"	"	167 37	16 67	1,884 04
	16	1,000	14	700	"	"	167 37	16 67	1,884 04
	1	1,000	13	650	Jan. 1, '62.	"	144 04	16 67	1,810 71
	17	1,000	14	700	July 1, '61.	"	167 37	16 67	1,884 04
	19	1,000	14	700	"	"	167 37	16 67	1,884 04
	3	1,000	7	700	Jan. 1, '62.	"	155 19	16 67	1,871 86
	4	1,000	7	700	"	"	155 19	16 67	1,871 86
	14	1,000	7	700	"	"	155 19	16 67	1,871 86
	17	1,000	7	700	"	"	155 19	16 67	1,871 86
	19	1,000	7	700	"	"	155 19	16 67	1,871 86
	18	1,000	7	700	"	"	155 19	16 67	1,871 86
	23	1,000	7	700	"	"	155 19	16 67	1,871 86
Jo's Young	1	1,000							1,000 00
	31	1,000							1,000 00
	32	1,000							1,000 00
	33	1,000							1,000 00
	34	1,000							1,000 00
	35	1,000							1,000 00
	36	1,000							1,000 00
	38	1,000							1,000 00
	39	1,000							1,000 00
	40	1,000							1,000 00
	Estimated interest on the last above ten bonds								750 00
" "	Judgment against Muscatine County, May 16, 1867								6,180 00
	Costs								50 00
	Interest from May 16, 1867, to March 1, 1868, at 7 %								354 24

Johnson County bonds.—Schedule K.

Name of claimant.	No. of bond.	Amount of bond due.	No. of c'upons due March 1, 1868.	Amount of c'upons past due.	Dates of maturity of c'upons.	Interest on c'upons to March 1, 1868.	Interest on bond after date of maturity.	Total amount bonds, c'upons, & interest to March 1, 1868.
Joseph Young	16	1,000	3	105	Sept. 1, '62—Sept. 1, '63	36 77	7 % interest. 315 00	
	17	1,000	3	105	" "	36 77	315 00	
	18	1,000	3	105	" "	36 77	315 00	
	19	1,000	3	105	" "	36 77	315 00	
	15	1,000	3	105	" "	36 77	315 00	
	20	1,000	5	175	Sept. 1, 1861. "	67 39	315 00	

Davenport City bonds.

Joseph Young	76	500	11	275	Aug. 1, '60—Aug. 1, '65	97 87	10 % interest. 129 17	
	86	500	10	250	Feb. 1, '61. "	84 60	129 17	
	25	500	9	225	Aug. 1, '61. "	72 20	129 17	
	26	500	9	225	" "	72 20	129 17	
	27	500	9	225	" "	72 20	129 17	
	28	500	9	225	" "	72 20	129 17	
	71	500	9	225	" "	72 20	129 17	
	72	500	9	225	" "	72 20	129 17	
	60	1,000	9	450	" "	144 36	258 34	

179 *City of Davenport.—Schedule K.*

Name of claimant.	Amount of bonds due.	Amount of bonds not due.		Total amount of bonds, c'upons, & interest to March 1, 1868.
Bro't forward.....	$11,000	$226,000		$499,400 21
Joseph Young.....			Judgment against The City of Davenport, May 15, 1867.....	56,390 75
			Interest from May 15, 1867, to March 1, 1868, at 7 %.....	3,135 95
" "			Judgment against The City of Davenport, May 11, 1866.....	3,094 03
			Interest from May 11, 1866, to March 1, 1868, at 7 %.....	407 96
			Total amount of Joseph Young's claim.....	$562,428 90
Mark Howard.....			Judgment against The City of Davenport, Oct. 15, 1864.....	3,562 00
			Interest from Oct. 15, 1864, to March 1, 1868, at 7 %.....	842 22
			Total amount of Mark Howard's claim.....	$4,404 22
John Weber.....			Judgment against The City of Davenport, Oct. 19, 1865.....	8,581 00
			Interest from Oct. 19, 1865, to March 1, 1868, at 7 %.....	14,121 59
			Total amount of John Weber's claim.....	$10,002 59

(Endorsed :) Filed February 28th, 1868.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the eighteenth day of April, A. D. 1868, came B. F. Allen, receiver in the above entitled cause, and filed in the office of said clerk a report; which report is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD, JOHN WEBBER, & JOSEPH Young,
ag't
THE CITY OF DAVENPORT, THE MISSISSIPPI & Missouri Railroad Company, The Chicago and Rock Island Railroad Company, The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, j'r, John Elliott, Blakeley Willson, The County of Muscatine, The City of Muscatine, The County of Scott, and The City of Iowa City. } Receiver's report.

B. F. Allen, appointed and qualified as receiver in the above-entitled cause, respectfully reports to the court—

1. That, on the 29th day of February, A. D. 1868, he served the paper hereto appended and marked Exhibit A, upon John F. Tracy, president of the Chicago, Rock Island & Pacific Railroad, and upon Francis H. Tows, secretary of said company, by delivering to them, at the city of New York, a true, full, & correct copy of the same; that the said Tracy and Tows, as officers of said railroad company, declined to deliver to me said bonds, c'upons, and moneys in the decree in this cause ordered to be delivered, assigning as a reason therefor that the said railroad company, its officers, and agents had been restrained and enjoined from paying over or parting with said trust fund, or any

180 part thereof, by an order of the supreme court of the city and county of New York, in a certain cause wherein one John D. Maxwell was plaintiff, and the defendants herein were defendants; that they then and there exhibited to me a paper purporting to be a copy of said injunction order served on them on the second day of October, 1866; which paper is hereto appended and marked "Exhibit B." That the said Tracy and Tows assigned as a further reason for declining to surrender to me the said bonds, c'upons, and moneys, that several writs of attachment had issued out of the said supreme court of the city and county of New York, and had been served upon them as officers of said railroad company, attaching all of said funds then in the hands of said company; that said attachments were served in the months of July & August, A. D. 1866; that a delivery of the said funds to me, under the order of this court, would subject them to punishment for a violation of said injunction and render them and the company liable on the process of attachment.

2. That at the same time & place, & in the same manner, I caused the said demand and exhibit to be served upon the defendants Stanton, Elliott, & Wilson, acting as committee or trustees of said fund; that they declined to surrender the bonds, c'upons, and moneys mentioned in the decree herein, and assigned as a reason therefor that said bonds, c'upons, and moneys had never come into their hands; that said bonds, c'upons, and moneys had remained under the control of said railroad company, by virtue of a contract which they had made with said company, to hold and disburse them according to the terms of the trust, or as the law should direct.

Wherefore I pray the court to make such further order as may be deemed necessary, directing the receiver as to the further discharge of his duties herein.

B. F. ALLEN, *Receiver.*

Exhibit A.

In the circuit court of the United States for the district of Iowa.

MARK HOWARD, JOHN WEBBER, & JOSEPH Young, *ag't*
THE CITY OF DAVENPORT, THE MISSISSIPPI and Missouri Railroad Company, The Chicago & Rock Island Railroad Company, The Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, j'r, John Elliott, Blakeley Wilson, The County of Muscatine, The City of Muscatine, The County of Scott, and The City of Iowa City.

To the said defendants:

I hereby call your attention to the decree of the circuit court of the United States for the district of Iowa in the above-entitled cause, and to the certificate of the clerk of said court, showing that I have duly qualified as receiver in said cause, under the appointment made in said decree. I hereby request, require, & demand that you will, without delay, deliver to me all bonds, c'upons, & moneys in your hands, or in anywise under your control, required by the terms of said decree to be paid to me as receiver.

If you have not the custody or control of any such bonds, coupons, or moneys, or, having them decline to surrender them in compli-
181 ance with this demand, I have to request that you will so advise me in writing, that I may report the same to the court.

B. F. ALLEN, *Receiver.*

To which is appended a full & correct copy of the interlocutory decree herein, a copy of which is hereinbefore set out, commencing folio 632 of this transcript.

Following the said copy decree is a certificate executed by W. G. Woodward, the clerk of this court, in the words and figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL.

I, Wm. G. Woodward, clerk of the circuit court of the United States for the district of Iowa, do hereby certify that the foregoing is a true, full, and complete copy of the decree in the cause above entered, as the same appears of record in my office.

And I do further certify that B. F. Allen, the receiver therein named and appointed, has duly qualified for the discharge of the duties of such receivership, by executing & filing the bond required by said decree, which bond has been approved by me.

In testimony whereof witness my signature and the seal of said court hereto affixed this 22d day of February, 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

Exhibit B.

Supreme court.

JOHN D. MAXWELL
ag't
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, The Chicago & Rock Island Railroad Company, The Chicago, Rock Island & Pacific Railroad Company, Geo. W. Stanton, jr., John Elliott, Blakeley Wilson, & The City of Muscatine.

On the complaint herein duly verified, and affidavits thereto annexed, it is, on motion of Burrill, Davidson & Burrill, plaintiff's attorneys, ordered that the several defendants herein, them and each of them, directors, agents, and servants, be, and they are hereby, restrained from, and enjoined against, paying over to the stockholders of the Mississippi & Missouri Railroad Company, or to any person for them, or for or on account of, in respect to any shares of the stock of said company, as dividends or otherwise, any part of the proceeds of the sale, assignment, or transfer of the property, assets, or effects of the said last-mentioned railroad company, or any part of the sum in and by the agreement in the complaint mentioned, or in or by any other agreement, or in any manner appropriated, set apart, or agreed to be paid to the said stockholders, or for or on account of the stock of the said company, or any part of the sum of five hundred and fifty-two thou-

182 sand four hundred dollars in the complaint mentioned, or other sum agreed to be paid by the defendants, or either of them, to the stockholders of the said company, or to any person for them, or for their benefit, or on their account or behalf, until the further order of the court.

GEO. D. BARNARD.

(Endorsed:) Filed April 18, 1868.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the twelfth day of May, 1868, came the defendants The Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Willson, by John P. Cook, their solicitor, and filed in said clerk's office their exceptions to the master's report in said cause, which exceptions are in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Iowa:

In the circuit court of the United States for said district.

MARK HOWARD, JOHN WEBBER, & JOSEPH Young,
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI & Missouri Railroad Company, The Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Wilson, & others.

Exceptions taken by George W. Stanton, jr., John Elliott, Blakely Wilson, The Chicago, Rock Island & Pacific Railroad Company, defendants, to the report of A. H. Bennet, the master to whom this cause was referred by a decree made herein on the 30th day of October, 1867, and which report bears date the 27th day of February, 1868.

1st. For that the said master, in ascertaining the amounts due to the several parties, has figured at an improper rate of interest, contrary to the terms of the contract between the parties, and to the law.

Wherefore the said defendants doth except to the said general report, and appeals therefrom to the judgment of this court.

JNO. P. COOK,
Sol'r for Def'ts.

(Endorsed:) Filed May 12, 1868.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the thirteenth day of May, in the May term 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

MARK HOWARD ET AL.
ag't
CITY OF DAVENPORT.

In this cause leave is given to file answer nunc pro tunc, as per agreement on file.

On the same day, to wit, on the thirteenth day of May, in the May

term, A. D. 1868, in said court, in the record of proceedings thereof in said entitled cause, is the following entry, to wit:

183 MARK HOWARD ET AL.
vs.
CITY OF DAVENPORT ET AL.

In this case the exceptions to master's report is overruled and the report confirmed, and the master is allowed four hundred dollars as fees for his services herein.

On this day, to wit, the fourteenth day of May, in the May term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI & Missouri Railroad Company.

In pursuance of stipulation of the parties on file herein and on motion of John N. Rogers, solicitor for the parties, it is ordered that the petitioner of V. P. Douw, Christopher Y. Lansing, Jared F. Harrison, Joseph W. Clark, Harriet Le Conte, & Margaret I. Nisbet, as intervening creditors of the said Mississippi & Missouri Railroad Company, be filed herein nunc pro tunc as of the first day of October, 1867, and that the order of reference made herein at the last October term be also amended nunc pro tunc, so as to include the claims of said parties above named, & require the master to ascertain and report the amount due to them in the same manner as the other claims so referred to him.

On this day, to wit, the ninth day of June, in the May term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

UNITED STATES OF AMERICA,
District of Iowa, ss:

At a term of the circuit court of the United States, for said district, begun & holden at Des Moines on the second Tuesday, being the twelfth day or May, A. D. 1868—

Present, the Hon. James M. Love, district judge.

MARK HOWARD & JOHN WEBBER, complainants, & Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, intervening claimants, joining in the bill,
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI, & Missouri Railroad Company, The Chicago, & Rock Island Railroad Company, The Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Wilson, The City of Muscatine, The City of Iowa City, & The County of Scott, defendants.
} In chancery, No. 69.

This cause came on to be further heard at this term, to wit, on

the sixth day of June, A. D. 1868, upon the report of Asahel H.
184 Bennett, esq., the master to whom the same was referred by an order made therein at the October term, A. D. 1867, and thereupon all the parties appearing by their respective solicitors, except The Mississippi and Missouri Railroad Company, & exceptions having been taken to said master's report by the said Chicago, Rock Island and Pacific Railroad Company, and the said Stanton, Wilson, and Elliott, and the court having considered the same, doth overrule said exceptions, whereupon, on motion of complainants' solicitors, it is ordered that said report be, and the same is hereby, in all things confirmed.

And thereupon the said cause coming on for final hearing, and having been argued by counsel, the court being fully advised in respect thereto, doth order & adjudge and decree as follows, to wit:

That the complainants and the said other parties who have come in & joined in the prosecution of this suit are entitled, as creditors of the said Mississippi and Missouri Railroad Company, to so much of the purchase-money or consideration of five million five hundred thousand dollars, ($5,500,000,) for which the railroad and other property of said Mississippi and Missouri Railroad Company was sold, under and by virtue of the terms of the contract of 1st November, A. D. 1865, between said Mississippi & Missouri Railroad Company, and said Chicago & Rock Island Railroad Company, as was agreed & intended on said sale to be reserved and distributed among the stockholders of said Mississippi & Missouri Railroad Company, to wit, the sum of five hundred and fifty-two thousand three hundred and twenty dollars, ($552,320,) being equal to sixteen per cent. on the par value of the capital stock of said Mississippi and Missouri Railroad Company, to the same extent that the said Mississippi & Missouri Railroad Company, or its stockholders, would have been entitled to the same, in the absence of any claim thereon by such creditors, and subject to the same limitations & deductions & no other, to which the said Mississippi and Missouri Railroad Company or its stockholders would be subject. That any deficiency in the said purchase-money, or fund of five million five hundred thousand dollars, ($5,500,000,) after payment thereout of the charges and expenses of foreclosure & sale of the said railroad, and of making title thereto to the said Chicago, Rock Island, & Pacific Railroad Company, amounting to the sum of fifty-eight thousand dollars, ($58,000,) to pay in full the several sums or dividends so agreed to be paid or distributed to the holders of the several classes of mortgage bonds of the said Mississippi and Missouri Railroad Company, and to the stockholders of said railroad company, must be borne by the said bondholders and stockholders, and the complainants & other creditors joining herein, as succeeding to the rights of said stockholders pro rata, and in proportion to the respective amounts so agreed to be distributed among them. That such deficiencies exists, and amounts to the sum of one hundred thousand six hundred and eighteen dollars, ($100,618,) and that the proportion thereof which should be charged upon and borne by the said complainants, and which should be deducted from the said sum of five hundred and fifty-two thousand three hundred and twenty dollars ($552,320) coming to them, is the sum of ten thousand seven hundred and ninety-three dollars, ($10,793,) leaving the nett sum of five hundred and forty-one thousand five hundred and twenty-seven dollars, ($541,527,) to which the complainants & others joining with them are entitled, with interest thereon at seven per cent. per annum, from the first day of December, A. D. 1865.

It is, therefore, further ordered, adjudged, and decreed that the said Chicago, Rock Island & Pacific Railroad Company do
185 pay over and deliver forthwith unto B. F. Allen, the receiver heretofore appointed in this case, the said sum of five hundred & forty-one thousand five hundred and twenty-seven dollars, ($541,527,) which payment shall be made either in cash or in the bonds of said company constituting and being part of its bonds to the amount of nine million dollars, ($9,000,000,) bearing interest at seven per cent. per annum, payable semi-annually, and secured by first mortgage on the entire line of the railroad of said consolidated company, its franchises & depots, from Chicago to Des Moines and the Oskaloosa branch thereof, as provided by contract of sale between the said Mississippi and Missouri Railroad Company and the Chicago & Rock Island Railroad Company, dated November 1st, A. D. 1865, which said bonds shall be taken and received in such payment at the par value of the principal sum secured to be paid thereby.

That upon so much of said five hundred and forty-one thousand five hundred & twenty-seven dollars, ($541,527,) as it shall pay to said receiver in cash, it do fully pay to said receiver in cash, interest from December 1st, A. D. 1865, at seven per cent. per annum, down to the time of such payment, and that on so much of said sum of five hundred and forty-one thousand five hundred and twenty-seven dollars, ($541,527,) as it shall pay in said bonds, it further pay to said receiver in cash interest at said rate, from December 1st, A. D. 1865, to the day from which said bonds, on their face, bear or carry interest, and shall also pay in cash to said receiver the interest which shall at the time of such payment have accrued and become due on said bonds, from the day last aforesaid, as represented by the c'upons attached to said bonds.

And it is further ordered and decreed that said receiver do proceed to convert the said bonds so received by him into money, by the sale thereof at public sale at the stock exchange in the city of New York at not less than the current market price of said bonds at said stock exchange at such time as said receiver may think proper, for the best interest of the parties concerned; but before any such sale, said receiver shall first notify the said parties, their agents or attorneys, of the time of said sale and the amount to be put on the market at any one time, and shall also give five days public notice of said sale in a daily paper published in the city of New York.

That, from the fund so realized and in his hands, he first pay and satisfy the costs of all the parties to this suit, as taxed, together with his own costs and charges in the execution of this decree, to be settled and allowed by the court or a judge thereof.

That, after payment of said costs & charges, he shall apportion the fund remaining in his hands among the said several complainants and claimants joining with them herein pro rata in proportion to the amounts of their said claims as ascertained by the said master's report herein, both matured and not matured, and which said amounts are as follows, to wit:

To Mark Howard, the sum of four thousand four hundred and four $\frac{32}{100}$ dollars ($4,404 59.)

To John Webber, the sum of ten thousand & two $\frac{59}{100}$ dollars (10,002 59.)

To Joseph Young, the sum of five hundred and sixty-two thousand four hundred and twenty-eight $\frac{90}{100}$ dollars ($562,428 90.)

To Clark Durant, the sum of thirty-six thousand five hundred and sixty $\frac{93}{100}$ dollars ($36,560 93.)

To Charles W. Durant, the sum of twenty-four thousand one hundred & twenty-eight $\frac{14}{100}$ dollars ($24,128 14.)

186 To Robert Murray, the sum of eleven thousand eight hundred & fifty-one $\frac{91}{100}$ dollars ($11,851 97.)

To Henry Vanderveer, the sum of eight thousand six hundred & thirty-seven $\frac{42}{100}$ dollars.

To William Elliott, the sum of eleven thousand two hundred and thirty-nine $\frac{70}{100}$ dollars ($11,239 70.)

To George Bliss, the sum of thirty-eight thousand one hundred and sixty-six $\frac{04}{100}$ dollars ($38,166 04.)

To Betsey Tracy, the sum of twenty-one thousand nine hundred and eighty-four $\frac{06}{100}$ dollars ($21,984 06.)

To Harriet Le Conte, the sum of twenty-one thousand three hundred & eighteen $\frac{75}{100}$ dollars ($21,318 75.)

To Joseph W. Clark, the sum of twelve thousand seven hundred & twenty $\frac{50}{100}$ dollars ($12,720 15.)

To Volkert P. Douw and Christopher Y. Lansing, the sum of fifteen thousand seven hundred and ninety-four $\frac{8}{100}$ dollars ($15,794 08.)

To Margaret I. Nisbet, the sum of eight thousand two hundred & twenty-two $\frac{60}{100}$ dollars ($8,272 60.)

To Jared F. Harrison, the sum of fourteen thousand five hundred and twenty-two $\frac{48}{100}$ dollars ($14, 522 48.)

That from the said fund so apportioned and set apart to each of said parties, the said receiver shall pay first to such party in full, (so far as the fund so set apart to him will go,) the amount of claim now matured and due, as ascertained by said report, together with any additional amount which shall have matured & become due at the time of such payment in the following order, viz: He shall first pay in full, or so far as such fund will go, any judgment or judgments of such party, if any; out of the remainder of such money, if any, he shall next pay in full, or so far as such moneys will go, any & all c'upons which are due on the bonds held by such party; and out of the remainder of such moneys, if any, he shall next pay in full, or so far as such funds will go, the principal of any bond or bonds which are matured and due; and in case that the amount of such matured bonds exceed the sum so applicable to their payment, then he shall pay in full such part of said bonds as said sum shall be sufficient to pay; and the remainder of the fund so apportioned and set apart to each of said parties shall in like manner be applied from time to time by the said receiver to the payment to such party of the amounts which shall thereafter become due and remain unpaid for either interest or principal on his or her respective claims, as and when the same shall fall due; provided, that if said George W. Stanton, j'r, John Elliott, and Blakeley Wilson, trustees, shall file with said receiver their written consent thereto, said receiver shall apply the said remainder or residue of the sum so set apart, & appropriated to any of said parties who shall consent so to receive the same, in payment & satisfaction, so far as the same will go, of the principal sum or sums so secured to be paid by the said guaranteed bonds held by them respectively, though not yet matured, they rebating all future interest thereon to the extent of such payments.

That before such payments are made, each of such parties shall produce and deliver to said receiver a written statement, certified by the clerk of the court to be correct, of the parties, date, and amount of each judgment of which he claims payment, and shall also produce & deliver

to the receiver all c'upons and bonds which are due and which may be paid in full, together with a receipt for such payment, and shall deliver to him a receipt stating the amount which is paid on any judg-
187 ment, bond, or c'upon, which may be paid only in part, describing the sum so that it may be identified, and in case of such partial payment when made, the receiver shall indorse on such bond a statement of the amount so paid by him, and that the sum was paid from funds in his hands as receiver, and all bonds and c'upons shall be produced to him for such endorsement before such payment shall be made thereon; and the receiver shall file with the clerk of the court in which the judgment so paid in part is entered, a statement of the amount so paid by him thereon, and that the same was paid from funds in his hands as receiver, which statement shall by said clerk be filed & preserved among the papers in the cause.

And it is further adjudged & decreed that the shareholders of the Mississippi and Missouri Railroad Company who would be entitled to a distribution of said fund according to the agreement of November 1st, 1865, and subsequent agreements between the stockholders and bondholders of *of* the Mississippi and Missouri Railroad Company, and said Stanton, Elliott, and Wilson, and who would have been entitled to said fund but for the claims of the creditors of the said Mississippi and Missouri Railroad Company, be, and they hereby are, subrogated to all the rights, claims, & remedies of the parties plaintiff respectively, in and upon each and all of such judgments, c'upons, and bonds, as and when the same shall be so paid in full, against the several municipal corporations which are the principal debtors on such bonds and judgments; that such judgments shall remain in full force and effect against such corporations for the benefit of said shareholders, who may enforce the collection of the same in the name of the plaintiffs therein or otherwise, but at their own costs & charges, by any process, remedy, or proceeding which said plaintiffs might have had for their own benefit; that any and all proceedings which may have been instituted by any of said parties for the collection of said demands shall remain and enure to the benefit of said shareholders, who shall be entitled to hold and continue the same in their own behalf, and, to this end, the plaintiffs respectively, on the payment of such judgments by the receiver, shall execute, acknowledge, and deliver to him an assignment of each judgment so paid, and the receiver shall, on the payment of the same, deliver to the lawfully constituted and authorized trustees or agents of said shareholders such assignments of said judgments, and shall also deliver to them all c'upons and bonds which shall have been paid in full as above directed.

And it is further ordered, adjudged, & decreed, that if, after payment in full to any of said parties by said receiver of all sums which said party shall be entitled to have paid to him out of said fund, according to the directions hereinbefore given, there shall remain in said receiver's hands any portion or residue of the proportion of said fund set apart and appropriated to such party, as hereinbefore directed, the same shall be reported by said receiver to the court and held subject to such further order and direction as may be made by the court in respect to the disposition thereof.

And thereupon the said Chicago, Rock Island and Pacific Railroad Company, and the said George W. Stanton, jr., John Elliott, and Blakeley Wilson, by their solicitors, pray and appeal from this decree to the Supreme Court of the United States, & it is allowed to them, on their giving bond with sureties in the penal sum of five hundred dollars as

provided by law, for the costs of the appeal; provided, that, in order to supersede and stay execution of said decree pending such
188 appeal, they shall give bond with sureties, conditioned to be approved as provided by law, in the penal sum of eight hundred thousand dollars.

J. M. LOVE, *Judge.*

Attest:
W. G. WOODWARD, *Clerk.*

On this day, to wit, the seventeenth day of June, came the plaintiffs, by Grant, their solicitor, and filed in the office of said clerk, papers in the words & figures following, to wit:

Supreme court chambers, city hall, New York, June 10th, 1868.

Present, Hon. D. P. Ingraham, justice.

THOMAS C. DURANT
vs.
THE COUNTY OF WASHINGTON.

THOMAS C. DURANT
ag'st
THE COUNTY OF IOWA.

THOMAS C. DURANT
ag't
THE COUNTY OF MUSCATINE.

THOMAS C. DURANT
ag't
THE COUNTY OF POTTAWATTAMIE.

THOMAS C. DURANT
ag't
THE COUNTY OF POWESHIEK.

ELIZABETH MORGAN BLAKE
ag't
THE COUNTY OF IOWA.

Upon the annexed affidavit, and on motion of Davis & Edsall, plaintiffs' attorneys, ordered that the above actions be discontinued without costs to either party.

Copy.

CHA'S E. LOEW, *Clerk.*

(Endorsed:) Filed June 17, 1868.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the thirteenth day of June, A. D. 1868, came the defendants, the Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, defendants, by Cook and Denny, their solicitors, and filed in said clerk's office their appeal bond, in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

Appeal to the Supreme Court of the United States.

Know all men by these presents, that we, The Chicago, Rock Island and Pacific Railroad Company, and George W. Stanton, jr., John Elliott, and Blakeley Wilson, as principals, and
189 Abel Kimball and B. F. Allen, as sureties, are held and firmly bound unto Mark Howard, John Weber, Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, in the sum of five hundred dollars, to be paid to the said Mark Howard and his associates, as plaintiffs in this case, their executors, or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated 13th day of June, A. D. 1868.

Whereas the above-named Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, & Blakeley Wilson have taken an appeal to the Supreme Court of the United States from the said circuit court of the United States for the district of Iowa, to reverse the judgment rendered in the above-entitled suit by the said circuit court of the United States in and for the district of Iowa:

Now, therefore, the condition of this obligation is such, that if the above-named Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, & Blakeley Wilson shall prosecute their appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Chicago, Rock Island & Pacific Railroad Co.

[C., R. I. & P. R. R. Co. SEAL.] By EBENNZER COOCK, *Sec'y*,
As witness the seal of said Comp'y.

GEO. W. STANTON, JR., [SEAL.]
JOHN ELLIOTT, [SEAL.]
BLAKELEY WILSON, [SEAL.]

By their att'y of record, JNO. P. COOK.

ABEL KIMBALL. [SEAL.]
B. F. ALLEN. [SEAL.]

Approved:

J. M. LOVE,
Judge U. S. Dist. Court.
W. G. WOODWARD,
Clerk C. C. U. S. Iowa.

(Endorsed:) Filed June 13, 1868.

W. G. WOODWARD, *Clerk.*

The following paper, to wit, stipulation signed by counsel, appears on the files of said cause in said clerk's office, but there is no record, by indorsement thereon or otherwise, showing when or by whom the same was filed; said stipulation is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & ALS.
vs.
THE CITY OF DAVENPORT & OTHERS.

In this cause The Chicago, Rock Island & Pacific Railroad Company, & Stanton, Elliott, & Wilson, parties, appeal from the decree.

190 The Mississippi and Missouri Railroad Company, that was duly served with a subpœna & judgment rendered against them, for want of an answer, does not appeal.

Now the defendants below who do appeal agree that, in the court above, they will present no question to the appellate court as to the rights of the appellants, which could not properly make if the said Mississippi & Missouri Railroad Company had appeared in the court below & answered.

November, 1868.

ROGERS & GRANT,
For Appellees.
JOHN P. COOK,
For the Appellants.

On this day, to wit, the twenty-second day of July, A. D. 1868, came B. F. Allen, receiver in said entitled cause, & filed in said clerk's office a report, which is in the words and figures following, with the exception of the copy of the decree referred to in the demand appended to said report, which is omitted, a true and correct copy of the same appearing and commencing at folio 777 of this transcript, to wit:

In the circuit court of the United States, district of Iowa:

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS. } Report of receiver.

To the honorable judge of the circuit court of the United States for the district of Iowa:

The undersigned, receiver appointed by this court, in the above-entitled cause, respectfully report to the court, that, in the month of June, 1868, he caused demands in writing, a copy of which is hereto appended, to be served upon John F. Tracy, president of the Chicago, Rock Island and Pacific Railroad Company; Francis H. Tows, assistant secretary of said company, and Wm. F. Coolbaugh, treasurer of said company; that, on the 16th day of July he received from the said John F. Tracy an answer to said demand, which is also appended hereto.

I was at the same time advised by John P. Cook, the attorney of the said railroad company, that the other persons above named would make no answer to my demand, for the reason that the answer of Mr. Tracy was for said company, and answers on their part unnecessary.

B. F. ALLEN, *Receiver.*

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT, THE CHICAGO, ROCK Island & Pacific Railroad Company, et al. } In equity.

In the matter of the demand made of the officers of the said Chicago, Rock Island and Pacific Railroad Company, hereto attached by B. F. Allen, esq., receiver, &c.

To B. F. ALLEN, Esq., *Receiver, &c.*

SIR: In response to your demand on me and other officers of the said Chicago, Rock Island and Pacific Railroad Company, for
191 the delivery to you, as receiver in the foregoing entitled case, of certain bonds, moneys, &c., specified in your notice, and a copy of the decree, which I attach hereto, I, John F. Tracy, president of said railroad company, say that I cannot comply with your request, nor can any officer of said railroad company, owing to legal disabilities; that is to say, there is now pending and undetermined in the city of New York, before Hon. George G. Barnard, one of the justices of said supreme court, several suits in relation to this same fund, commenced in the year A. D. 1866, and among others the following entitled causes.

123.

JOHN D. MAXWELL
against
THE MISSISSIPPI AND MISSOURI RAILROAD COMpany.

Action on judgment for $8,106 65 at issue. Not tried. Commenced in 1866.

130.

JOHN D. MAXWELL
ag't
THE SAME COMPANY.

Action on guaranty of Muscatine city bonds, c'upons, & the same judgment of $8,106 65. Total claim $9,806 65 at issue. Not tried.

175.

JOHN WEBBER
ag't
THE SAME COMPANY.

Action on c'upons of guarantied bonds of Iowa City, $800, & interest, at issue. Not tried.

143.

JOHN D. MAXWELL
ag't
THE SAME COMPANY AND OTHERS.

Creditors' bill to force the application of the 16 per cent. fund to pay debt of plaintiff, bill for self, and all creditors at issue. Not tried.

In the latter entitled cause Justice Barnard granted an injunction, the following being a true copy thereof:

Supreme court.

JOHN D. MAXWELL
ag'st
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, The Chicago & Rock Island Railroad Company, The Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, & Blakeley Wilson, & The City of Davenport.

On the complaint herein duly verified, and affidavits thereto annexed, it is, on motion of Burrill, Davison, & Burrill, plaintiff's attorneys,
192 ordered that the several defendants herein, them & each of them, directors, agents, and servants, be, and they are hereby, restrained from and enjoined against paying over to the stockholders of the Mississippi & Missouri Railroad Company, or to any person for them, or for or on account of, in respect to any shares of the stock of said company, as dividends, or otherwise, any parts of the proceeds of the sale, assignment, or transfer of the property, assets, or effects of the last-mentioned railroad company, or any part of the sum in and by the agreement in the complaint mentioned, or in and by any other agreement, or in any manner appropriated or set apart, or agreed to be paid to the said stockholders, or for or on account of the stock of the said company, or any part of the sum of five hundred and fifty-two thousand four hundred dollars in the complaint mentioned, or other sum agreed to be paid by the defendants, or either of them, to the stockholders of the said company, or to any person for them, or for their benefit, or on their account or behalf, until the further order of the court.

GEORGE G. BARNARD, *Justice.*

Wherefore the said Chicago, Rock Island and Pacific Railroad submits, that it cannot safely part with said bonds and money until the matters aforesaid are adjudicated.

JOHN F. TRACY,
Pres't C., R. I. & P. R. R. Co.

STATE OF ILLINOIS,
Cook County, City of Chicago, ss:

Be it remembered that, on this fifteenth day of July, A. D. 1868, before the undersigned, a notary public in & for said city, came John F. Tracy, whose proper signature appears signed to the foregoing paper, and made oath before me that, from his information, advise, and belief, the foregoing statement *was* made and signed by him, is true, as he verily believes.

HENRY PRATT,
Notary Public.

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

To John F. Tracy, president, Ebenezer Cook, secretary; Francis H. Tows, ass't sec.; W'm F. Coolbaugh, treasurer Chicago, Rock Island & Pacific Railroad Company:

Your attention is hereby called to the decree entered by the circuit court of the United States for the district of Iowa, in a certain cause wherein Mark Howard and others were plaintiffs, and The City of Davenport & others were defendants, a copy of which is hereto appended; and you, and each of you, are hereby requested and required to deliver without delay to my custody the bonds, c'upons, & moneys, which it is in said decree adjudged and ordered shall be delivered to me as receiver in said cause, to be distributed to the parties, and in the manner directed and ordered by the terms of said decree.

Upon being advised of your readiness to comply with the demands above set out, I will attend at such place as you may designate,
193 to receive said bonds, c'upons, and money, and execute the necessary receipts for the same.

And if, for any reason, you, or either of you, refuse to comply with the demand above set out, I request that you will communicate to me in writing the reasons for the same, & that such communication be made without delay, that I may report the same to the court at the next rule day.

B. F. ALLEN, *Receiver, &c.*

(Endorsed:) Filed July 22nd, 1868.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the thirty-first day of August, A. D. 1868, came the plaintiffs, by Grant, their solicitor, and filed in the said clerk's office a motion in said cause, which motion is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & ALS. *vs.* THE CITY OF DAVENPORT & OTHERS. } To rule day, 1st Monday in August, 1868.

Now come the plaintiffs Mark Howard and others, and show to the court that B. F. Allen, esq., the receiver appointed in this cause, has demanded of The Chicago, Rock Island & Pacific Railroad Company the money & bonds which they were required to deliver to him, and the said Chicago, Rock Island and Pacific Railroad Company has refused to deliver the same to him.

And the plaintiffs Howard, Weber, Young, Henry Vanderveer, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, C. Y. Lansing, & Jared F. Harrison, move the court, at the first Monday in August, 1868, at Des Moines, for an attachment against the president and directors of said company, or, if they cannot be found, for a writ of sequestration against the said Chicago, Rock Island & Pacific Railroad Company, to compel obedience to said decree.

21st July, 1868.

GRANT AND SMITH,
ROGERS & PUTNAM,
For Pl'ffs.

We accept a service of this motion. The same need not be filed until first Monday in August, 1868, a copy being furnished to us.
July 21, 1868.

COOK AND DRURY,
Att'ys for Stanton, Com., & C., R. I. & P. R. R. Co.

(Endorsed:) Filed August 31, 1868.
W. G. WOODWARD, *Clerk.*

The following papers, to wit, affidavit of James Grant, sworn to before S. F. Smith, notary public, August 6th, 1868; answer of defendants The Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, to the rule to show cause, &c.; transcript of record in the case of Frederick A. Foster
194 vs. The Mississippi & Missouri Railroad Company, George W. Stanton, jr., & others, in the supreme court of New York; affidavit of James Grant, sworn to before William J. Birchard, notary public, on the 1st day of August, A. D. 1868; affidavit of James Grant, sworn to before William J. Birchard, notary public, 5th September, A. D. 1868, appear on the files in said cause, but there is no record by endorsement thereon, or otherwise, showing when or by whom the same were filed in said clerk's office; said papers are in the words & figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

I, James Grant, being duly sworn, depose and say: I am the attorney of Mark Howard and the other plaintiffs; that the defendants The Chicago, Rock Island & Pacific Railroad Company, have been duly served with a copy of the decree in this cause, and have refused to execute the same, as will appear by the report of the receiver duly filed herein.
August 3, 1868.

JAMES GRANT.

Subscribed & sworn to by J. Grant, before me, and in my presence, this 6th day of August, A. D. 1868.
[SEAL.]
S. F. SMITH,
Notary Public, Scott Co., Iowa.

State of Iowa. United States circuit court for the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Now comes The Chicago, Rock Island and Pacific Railroad Company, & George W. Stanton, jr., John Elliott, & Blakeley Wilson, and show cause, under the rule entered herein, why distribution of the fund provided in the decree, in this case entered into, has not been made, & why they have not performed the decree, and for cause they represent and show that, on the insolvency of The Mississippi & Missouri Railroad Company, & when it was ascertained that the creditors of said company could not be paid in full, a meeting of the stock and bond holders of said company was held in the city of New York on the 20th day of October,

A. D. 1865; that, at said meeting, it was resolved and agreed by a majority of the bond & stock holders that they would apportion & divide the money arising from the sale of the M. & M. Railroad *Company* as follows, to wit:

1st mortgage bondholders in full				$1,256,490
2nd " " "	80 per cent.	on	$400,000	320,000
Oskaloosa division,	62 "	"	664,935	416,212
Land-grant bonds,	70 "	"	3,378,550	2,174,635
Construction bonds,	30 "	"	693,764	208,120
Capitol stock,	16 "	"	3,452,500	552,400
Expenses foreclosing mortgages				32,130
				$5,500,000

195 And that, for the purpose of carrying into full effect said agreement, a committee of three should be appointed, who should act as trustees, in receiving a surrender of the bonds & stock; and that the said trustees should, on such surrender of bonds and stock, issue and deliver to each of such persons making such surrender a certificate entitling them to their portion of the money accruing from the sale of said M. & M. Railroad, and its franchises and property; that the said George W. Stanton, jr., John Elliott, and Blakeley Wilson were appointed said trustees; that, in pursuance of their appointment, they proceeded to act, and did receive a surrender of a large part of the said bonds & stock, & through the Union Trust Company, acting as their agent, gave to each party making such surrender a certificate of the fact.

They further show that the money & bonds arising from the sale of the said M. & M. R. R. Company, its franchises, and lands, amounted to the sum five millions five hundred thousand dollars, & that said sale was made to The Chicago, Rock Island & Pacific Railroad Company, & which payment was to be made principally in the bonds of said railroad company, and which said bonds were to be received by the holders of said certificates in lieu of money.

Said trustees further represent and show that they, through their agents, proceeded to execute their trust by delivering to the holders of the bond' certificates for their several proportions of said bonds.

Said trustees further represent and show that, before delivering any of said bonds or money to any of the holders of certificates for stock surrendered, this suit was instituted to recover the sixteen per cent. set apart to the stockholders by said meeting of bond and stock holders; that such proceedings were had in said suit that, by the judgment and decree of the court, the plaintiffs in this suit, as general creditors of The M. & M. R. R. Co., were entitled to the same, & from that judgment & decree an appeal has been taken to the Supreme Court of the United States, & the cause is there pending and undetermined. But the said judgment and decree was not superseded, and said trustees represent that the defendant The Chicago, Rock Island & Pacific Railroad Company, holding the said sixteen per cent. for the purpose of obtaining the opinion of the Supreme Court as to which of the two parties was entitled to the same, whether the holders of the certificates for surrendered stock, or the plaintiffs in this suit as general creditors of said M. & M. Railroad Company, & that the said trustees have not, & never have had, actual possession of said bonds.

Said trustees further represent & show that another and third party now claims said sixteen per cent. fund, & have instituted their suit in

equity to recover the same, and have caused an injunction to be issued and served on them, and on the said Chicago, Rock Island & Pacific Railroad Company, commanding, enjoining, & restraining them, their agents or attorneys, from paying out, or in any manner disposing of any part of the money arising from the sale of the said M. & M. R. R. Co., its franchises, or lands; &, particularly, these defendants represent and show that, on the 30th day of July, A. D. 1868, one Frederick A. Foster commenced a suit in the supreme court of the State of New York, on the chancery side thereof, (the said court having jurisdiction of the parties and subject-matter,) in which the said Foster represents that he is the holder and owner of ten of the old M. & M. R. R. bonds, which bonds were secured by mortgage on the railroad, franchise, & lands of the said railroad company, and that he did not assent to the arrangement made at the said bond & stock holders' meeting, & that if
196 there is any fund in the hands of the said trustees claimed, or pretended, to be claimed, by any of the old stockholders, *that* he, as a bondholder, has a first and paramount right to the same; a copy of which said bill and papers filed in said case is herewith filed & made a part of this answer.

Said defendants further represent & show that one Mark Howard and others have heretofore filed their bill in the supreme court of the State of New York, on the chancery side thereof, in which these defendants are made parties defendants, and in which injunctions were issued and served on these defendants, by the terms of which they were enjoined and restrained from paying out or parting with any part of the fund arising from the sale of the said M. & M. Railroad, its franchises, or lands, which said suit is still pending, and the injunction issued therein in full force and operation.

Said trustees, further answering, say that their only interest in this fund is to distribute and divide the same according to the legal rights of the respective parties claiming the same, and to protect themselves from liability; and the said Chicago, Rock Island and Pacific Railroad Company have no further interest in this fund than as the agents of said trustees in delivering the bonds to the respective parties who may be legally entitled to the same, and these defendants cannot now deliver over this sixteen per cent. fund under the terms of the decree in this case, without violating the injunction issued & served on them in said Foster case, and thereby subjecting themselves to attachment and punishment for contempt of court.

These defendants, Stanton, Elliott, & Wilson, represent that they are all residents of the State of New York, except said Wilson, who resides in the State of New Jersey, and at all times subject to the process of its courts, and that the said Wilson has his principal place of business in the city of New York.

In consideration of the premises, said defendants ask that strict compliance with the terms of the decree may be postponed until it may be determined by the several courts which of the said several parties are in law and equity entitled to this fund.

And now, having answered the rule & shown the cause why they have not complied with the terms of the decree, they pray to be discharged herein without day.

[SEAL.]

BLAKELEY WILSON.
JOHN ELLIOTT.
GEO. W. STANTON, JR.
FRANCIS H. TOWS,
Ass't Sec'y C., R. I. & Pacific R. R. Co.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 29th day of August, 1868, before me appeared John Elliott & Blakeley Wilson, the defendants named in the foregoing answer, & being by me duly sworn, they severally made oath that the same had been carefully read to them, and signed by them, & they know the contents thereof, & that the same is true to the best of their knowledge, remembrance, information, and belief.

[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this thirty-first day of August, 1868, before me appeared George W. Stanton, jr., one of the defendants named in the foregoing answer, and, being by me duly sworn, made oath that he had carefully
197 read the said answer and signed the same, and knew the contents thereof, and that the same is true to the best of his knowledge, remembrance, information, & belief.

[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

The people of the State of New York, by the grace of God, free and independent:

Know ye, that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain affidavit and injunction order there remaining, in the words and figures following, to wit:

[SEAL.]

Supreme court of the State of New York.

FREDERICK A. FOSTER, PLAINTIFF,
vs.
THE MISSISSIPPI & MISSOURI RAILROAD CO., George W. Stanton, jr., and others, defendants.

CITY & COUNTY OF NEW YORK, *ss:*

Miller M. Lawson, of the city of New York, being sworn, says that, on the 31st day of August, 1868, he served George W. Stanton, jr., one of the defendants *at* this action, at No. 10 Old Slip, in said city, with the injunction order granted in this action by Mr. Justice Cardozo, dated July 31, 1868, a copy whereof is hereto annexed, by delivering to and leaving with him a copy of said order, and at the same time showing to him a certified copy of the original injunction order.

MILLER M. LAWSON.

Sworn before me this 31st day of August, 1868.

EDWIN F. COREY,
Com'r of Deeds.

Supreme court of the State of New York.

FREDERICK A. FOSTER, PLAINTIFF,
ag'st
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, George W. Stanton, jr., John Elliott, Blakeley Wilson, The Chicago, Rock Island & Pacific Railroad Company, Thomas E. Walker, & Francis Haven, defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

John D. Shedlock, of said city, being sworn, says that, on the 29th day of August, 1868, he served Blakeley Wilson, one of the defendants in this action, at No. 56 Wall street, in said city, with the injunction order granted in this action by Mr. Justice Cardozo, dated July 31, 1868, a copy whereof is hereunto annexed, by delivering to and leaving with him a copy of said order, and at the same time showing to him a certified copy of the original injunction order.

JOHN D. SHEDLOCK.

Sworn before me this 29th day of August, 1868.

EDWIN F. COREY,
Com'r of Deeds.

198 In the supreme court of the State of New York.

FREDERICK A. FOSTER, PLAINTIFF,
ag't
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, George W. Stanton, junior, John Elliott, Blakeley Wilson, The Chicago, Rock Island & Pacific Railroad Co., Thomas E. Walker, & Franklin Haven. } Injunction by order.

It appearing satisfactorily to me, by the affidavit of Frederick A. Foster, the plaintiff, & the verified complaint, that sufficient grounds for an order of injunction exist, I do hereby order that the defendants George W. Stanton, junior, John Elliott, Blakeley Wilson, The Chicago, Rock Island and Pacific Railroad Company, Thomas E. Walker, and Franklin Haven, and the counsellors, attorneys, agents, and servants of them, or any or either of them, do desist and refrain from paying out, parting with, or disposing of, the whole or any part of the proceeds of the foreclosure and sale of the premises mortgaged to said Walker and Curtis B. Raymond by The Mississippi and Missouri Railroad Company, by its mortgage, dated May 8, 1857, executed to secure the payment of its land-grant bonds, in whatever funds, securities, or mortgages, the said proceeds may consist, until the further order of this court; and in case of disobedience of this order, you will be liable to the punishment therefor prescribed by law.

Dated New York, July 31st, 1868.

(Signed) ALBERT CARDOZO, *J. S. C.*

Supreme court of the State of New York.

FREDERICK A. FOSTER, PLAINTIFF,
ag't
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, Geo. W. Stanton, junior, John Elliott, Blakeley Wilson, The Chicago, Rock Island & Pacific Railroad Company, Thomas E. Walker, and Franklin Haven, defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

A. Francis Dawson, of the city of New York, being duly sworn, deposes and says that he is a clerk in the office of Fullerton, Knox and Rudd, the attorneys for the plaintiff in the above-entitled action; that,

on the 31st day of July, 1868, he served The Chicago, Rock Island and Pacific Railroad Company, one of the defendants in this action, with the injunction order granted therein by Mr. Justice Cardozo, dated July 31, 1868, a copy whereof is hereto annexed, by delivering to and leaving with Francis H. Tows, secretary of the said company, at the office of the said company, at the corner of Beaver and William streets, in the said city of New York, a copy of the said injunction order, and at the same time showed to him the original injunction order, and that deponent knew the said Tows, so served at the time of such service, to be the secretary of the said company.

Deponent further says that, on the 20th day of August, 1868, at the corner of Nassau and Cedar streets, in the city of New York, he served Thomas E. Walker, one of the defendants in this action, with the said injunction order, by delivering to & leaving with him a copy thereof, & at the same time showed to him the said original injunction order,
199 & that deponent knew the person so served to be the same person mentioned and described in the summons in this action as one of the defendants therein.

Deponent further says that, on the 28th day of August, 1868 at No. 56 Wall street, in the city of New York, he served John Elliott, one of the defendants in this action, with the said injunction order, by delivering to and leaving with him a copy of the said injunction order, and at the same time showed to him a certified copy of the said injunction order, and that deponent knows the person so served to be the same person mentioned and described in the summons in this action, as one of the defendants therein.

A. FRANCIS DAWSON.

Sworn to before me this 28th day of August, 1868.
[SEAL.] JOHN HAYES,
Notary Public in & for N. Y. Co.

In the supreme court of the State of New York.

FREDERICK A. FOSTER, PLAINTIFF,
against
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, George W. Stanton, junior, John Elliott, Blakeley Wilson, The Chicago, Rock Island & Pacific Railroad Company, Thomas E. Walker, and Franklin Haven, defendants. } Injunction by order.

It appearing satisfactorily to me, by the affidavit of Frederick A. Foster, plaintiff, and by the verified complaint, that sufficient grounds for an order of injunction exist, I do hereby order that the defendants George W Stanton, junior, John Elliott, Blakeley Wilson, The Chicago, Rock Island and Pacific Railroad Company, Thomas E. Walker, and Franklin Haven, and the counsellors, attorneys, agents, & servants of them, or any or either of them, do desist and refrain from paying out, parting with or disposing of the whole or any part of the proceeds of the foreclosure and sale of the premises mortgaged to said Walker & Curtis B. Raymond by The Mississippi and Missouri Railroad Company, by its mortgage dated May 8, 1857, executed to secure the payment of its land-grant bonds, in whatsoever funds, securities, or moneys the said proceeds may consist, until the further order of this court; and in case

of disobedience to this order, you will be liable to the punishment therefor prescribed by law.

Dated New York, July 31st, 1868.

ALBERT CARDOZO, *J. S. C.*

(Endorsed:) Filed August 28, 1868.

All of which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness George G. Barnard, justice, at the city of New York, the twenty-first day of August, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

CHA'S E. LOEW, *Clerk.*

I, George G. Barnard, presiding justice of the supreme court of the State of New York for the city and county of New York, do
200 hereby certify that Charles E. Loew, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly elected & sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, August 31st, 1868.

GEORGE G. BARNARD.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Leow, clerk of the supreme court of said State, in and for the city and county of New York, do hereby certify that George G. Barnard, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the city and county of New York, duly elected & sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 31st day of August, 1868.

[SEAL.] CHA'S E. LOEW, *Clerk.*

[Five c'ts U. S. revenue affixed and cancelled.]

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

I, James Grant, being duly sworn, depose that I am the attorney of John Webber & John D. Maxwell, in the State of Iowa, and acted in concert with John E. Burrill, their attorney in New York, who brought suits there for the same bonds & c'upons which are included in this suit.

That I know, of my personal knowledge, the suits in New York were commenced after the suit of Howard and Webber in this court; that I was consulted by Mr. Burrill about them, both before and after they were brought; that they were brought in aid of the suit in this court, and after they were begun I satisfied Mr. Burrill that the courts of New

York had no jurisdiction and he would fail there. He agreed with me to let them remain on the docket there and file the claims of Maxwell and Webber in this suit. He sent to our firm a list of all the bonds & c'upons held by Webber & Maxwell, & included in the New York suits; and we proved them up in Webber's name before the master in this case, and all the claims of Webber & Maxwell are included in the master's report and the final decree in this cause. Mr. Maxwell, the plaintiff in one of the New York suits, is now in Europe, & Mr. Burrill declines dismissing his suit, or either of the New York suits, until he hears from Maxwell; which this affiant believes, as matters of law, that the New York s are no bar to any proceedings in this court, being brought after those in this court; he has no objection to the court's making a further order in this cause; that before Webber receives his & Maxwell's share of the dividend the suits in New York should be dismissed and evidence thereof filed with the master.

JAMES GRANT.

Subscribed & sworn to by James Grant before me & in my presence this 1st day of August, A. D. 1868.

[SEAL.]

W. J. BIRCHARD,
Notary Public, Scott County, Iowa.

201 Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
ag't
THE CITY OF DAVENPORT AND OTHERS.

I, James Grant, being duly sworn, state that I am one of the attorneys of Mark Howard in relation to the bonds of The City of Davenport, guaranteed by The Miss. & Mo. Railroad Company, and have been for many years.

I have now in my possession all the bonds and c'upons which are involved in this suit, or guaranteed by the Miss. & Mo. Company & owned by Howard; that I have had, with my partner, the whole management of the business of collecting said bonds & c'upons, and I never was advised that he had any other attorney in relation thereto in New York or elsewhere; that he has left the entire management of collecting said bonds with me, & I originated this suit for him.

He never has informed me that he had or intended to bring any suit in New York upon these bonds & c'upons, and has never been advised by me so to do, and I do not believe that he would bring such a suit without my advice. I never heard such a suit alluded to, except in the affidavit of Elliott, Wilson, & Stanton, shown to me this day; no record of any such suit is with said affidavit, and I do not believe it possible for such a suit to have been begun, or to be pending without my knowledge. I was not advised that such a pretense was to be made until this day, too late for me to get Mr. Howard's affidavit.

JAMES GRANT.

Sworn to & subscribed fore me, a notary public in & for Scott County, Iowa, at Davenport, in said county, on this 5th of September, 1868, by James Grant.

[SEAL.]

W. J. BIRCHARD,
Notary Public, Scott County, Iowa.

The following stipulation appears upon the files of said cause in said court, but there is no record thereon, by indorsement or otherwise, showing when or by whom the same was filed. It is in the words and figures following, to wit:

Circuit court of the United States.

MARK HOWARD AND OTHERS
ag't
THE CITY OF DAVENPORT & OTHERS.

The plaintiffs Mark Howard and others, having made a motion on the last Monday in August, 1868, to attach the defendant The Chicago, Rock Island and Pacific Railroad Company, & to sequestrate their property for a refusal to obey the decree of the court in this cause, and the receiver's report of such refusal being filed, and it being desirable to have the opinion of the court on the questions raised by the defendants, the said Chicago, Rock Island & Pacific Railroad Company, it is agreed that the said defendants will show cause on the first Monday in September, at Des Moines, or such other place as may be agreed upon, before Judge Love, why said writs of attachment and se-
202 questration should not issue against said defendants in the same manner as if a rule had been duly issued and served in the premises.

COOK AND DRURY,
Att'ys for R. R. Company.
J. GRANT,
For Mark Howard & others.

On this day, to wit, the twenty-first day of October, A. D. 1868, came the defendants The Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, j'r, John Elliott, and Blakeley Wilson, by Cook & Drury, their solicitors, and filed in the office of said clerk a motion in said cause; which motion is in the words & figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
STANTON, ELLIOTT, WILSON, COMMITTEE, & The Chicago, Rock Island & Pacific Railroad Company.

In the matter of the order and decree of this honorable court, directing B. F. Allen, receiver, to receive the fund in this case and distribute the same as directed in the said decree, the said defendants Stanton, Elliot, and Wilson, committee, and The Chicago, Rock Island and Pacific Railroad Company respectfully present and give the court to be informed that since the refusal of the officers of said company to deliver said fund to said receiver, for the reason that the courts of a foreign State, to wit, the State of New York, had enjoined them from doing so on account of a claim set up to said fund by other parties claiming to have a superior right thereto, of which this court has heretofore been informed, the said Stanton, Elliott, and Wilson, the said trustees, and the said Chicago, Rock Island and Pacific Railroad Com-

pany, acting for the said trustees in the distribution of the said bonds, propose to deliver said bonds to the receiver appointed by this court, and submit the following statement of facts to the court:

First. The fund in controversy in this case is a trust fund which these defendants hold for whomsoever it may be decided may be legally entitled to the same. That when the final decree in this case was rendered, defendants appealed therefrom to the United States Supreme court, but it was not their duty, as such trustees, to involve themselves, or their friends in a pecuniary liability by superceding said judgment by a bond in an amount fixed by this court.

Second. These defendants submit that as usual trustees they are entitled to the protection of this honorable court, as well against pecuniary loss, as against the liability for contempt in acting against the orders of the courts of the State of New York; and

Third. Defendants submit that the said trust fund ought not to be distributed by the receiver until this case is finally disposed of and the rights of the several parties finally determined in the supreme court of the United States, because such distribution would hazard the fund, and in case of a reversal of said decree would be an irreparable injury to the cestui que trusts of these defendants, from the fact that a large amount of said fund, if distributed by the receiver, would go to citizens of foreign countries, & and who are beyond the jurisdiction of the courts of the United States of America.

203 And, lastly, these defendants submit that the fund will be amply protected by the security of the receiver.

Wherefore, under the advice of counsel, these defendants will pay to the said receiver, and submit to the order of the court in the premises, respectfully urging that the same may not be distributed among the parties whose pecuniary liability is unknown to this court & to these defendants, until the final disposition of this cause.

COOK AND DRURY,
Solicitors for Defendants.

STATE OF IOWA, *Scott County, ss:*

I, John P. Cook, of counsel for the foregoing named defendants, upon oath, do state that I have read the foregoing statement, and that the same is true as I verily believe.

JNO. P. COOK.

Subscribed by the said John P. Cook in my presence, and by him sworn to before me this 19th day of October, A. D. 1868.

[SEAL.] LUDWIG BRUNING,
Notary Public, Scott Co., Iowa.

(Endorsed:) Filed October 21st, 1868.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the 27th day of October, A. D. 1868, came Frederick A. Foster, by Withrow and Wright, his solicitors, & filed in said clerk's office his petition in said cause; which petition is in the words & figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
vs.
THE MISSISSIPPI & MISSOURI RIVER RAILROAD Company et al.

To the honorable the judges of the circuit court of the United States for the district of Iowa:

The petition of Frederick A. Foster respectfully showeth—

That your petitioner is a resident and citizen of the city of New York, in the State of New York; that The Mississippi & Missouri River Railroad Company, one of the defendants to the above entitled suit, was organized under the laws of the State of Iowa, for the purpose of constructing a railroad therein. That, on the eighth day of May, A. D. 1857, the said railroad company executed a mortgage bearing date of that day to Thomas E. Walker and Curtis B. Raymond, trustees, for the uses and purposes therein mentioned. That by said mortgage the said railroad company conveyed to said trustees, and their successors, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railway, then owned or thereafter to be acquired by said company, constituting or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri River, and the appurtenances thereof, and the right, title, and interest of said company to all the public lands of the United States granted by the act of Congress of May 15th, 1856, to the State of Iowa, and by the act of the legislature of the State of
204 Iowa, of July 14, 1856, to said company in trust for the benefit of the holders of bonds issued by said company, not exceeding in all seven millions of dollars in amount, being severally bonds for one thousand dollars each, dated May 8th, 1857, payable May 8th, 1877, to Clark Durant, or bearer, with interest at seven per cent. per annum, payable semi-annually, payable on the eighth days of November and May in each year, until the payment of the principal, on the presentation of the interest-warrants or c'upons to such bonds annexed, at the said company's office, in the city of New York, with the usual powers to said trustees, and their successors, upon default to pay interest, to enter upon, foreclose, and sell the mortgaged premises for the satisfaction of said bonds.

That under and pursuant to said mortgage the said railroad company issued and sold to divers persons said bonds to the sum of $3,612,000, or thereabouts, and that ten of said bonds, with all the c'upons thereof from and including the c'upon payable on November 8th, 1868, are now owned and held by your petitioner.

That the said Curtis B. Raymond having declined to act as trustee under said mortgage, one Franklin Haven was appointed, in accordance with the provisions of said mortgage, to act as one of the trustees in his place. That the said railroad company, being in default in the payment of interest on said bonds, the said Thomas E. Walker and Franklin Haven, as trustees under said mortgage, filed their cross-bill in a certain cause pending in this court on the original bill of Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., complainants against the said railroad company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, and John Webber, defendants.

That in said cross-bill they prayed a foreclosure of said mortgage, and the sale of said mortgaged premises for the satisfaction of the moneys owing thereon; that, on the eighth day of May, 1866, it was in said cause decreed in and by this court, among other things, that there was due upon said bonds, for principal and interest, $4,239,982 71, to be paid to said trustees; that in default of payment within a time fixed, the said mortgaged premises should be sold, and the proceeds of said sale should be applied to the payment of the said land-grant bonds,

and the over-due c'upons thereto attached; that, pursuant to said decree, the said mortgaged premises were sold, all of which will more fully appear by the records of this court in said cause, to which this petitioner craves leave for greater certainty to refer.

That, no part of the proceeds of said sale has been paid to the plaintiff in this action, nor upon said ten bonds, or any of them, held and owned as aforesaid, nor has the said company caused the said ten bonds, or the interest thereof, or any part of the same, to be paid; that the same remains wholly due and unpaid and owing to the plaintiff.

That, on or about the 20th day of October, A. D. 1865, and prior to the said foreclosure and sale, an arrangement or agreement was made by and between the said Mississippi & Missouri Railroad Company and other parties, including some of the holders of the bonds of the class above described, by which it was agreed that a portion of the proceeds of said sale, which of right was applicable to the payment of said bonds, should be withheld from such application, and improperly applied to the payment to the stockholders of said company, sixteen per cent. of the par amount of their stock therein, while the holders of said bonds should receive but seventy per cent. of the amount due them on the
205 bonds; that your petitioner & those who held the ten bonds above mentioned were not parties to such arrangement or agreement have never assented to or approved the same; that your petitioner is informed and believes that the holders of a large number of the bonds of said class have never assented to or agreed to be bound by said arrangement.

That by reason of said arrangement or agreement, a portion of the proceeds of the sale of the mortgaged property & other property of said company, a sum amounting to over $500,000 has been set apart to the payment of said sixteen per cent. to the said stockholders.

That the plaintiffs in this cause, being general creditors of the said Mississippi and Missouri Railroad Company, having no lien upon the property of said company, or the proceeds arising from the sale thereof, by virtue of being holders of its mortgage bonds or of judgments against it prior to the mortgage executed as above recited, filed their bill in this cause, praying the application of said fund to the payment of their claims against said company.

That, as your petitioner is informed, this court has, by its decree, ordered the payment of said fund by the Chicago, Rock Island and Pacific Railroad Company, & George W. Stanton, jr., John Elliott, & Blakeley Wilson, to one B. F. Allen, as receiver of this court, to be distributed to the several complainants and intervenors herein, and applied in payment, as far as the same is adequate, of the demands which they have and hold against the said Mississippi & Missouri River Railroad Company, all of which will more fully appear by the record of this cause in this court, to which, for greater certainty, the petitioner refers.

That neither this petitioner nor any prior holder of his said ten bonds has at any time assented to said arrangement or agreement for the payment of said proceeds to said stockholders, or to the complainants in this suit; that he has not in any manner relinquished or waived his rights to payment in full of said ten bonds, and all moneys due thereon out of the proceeds of said sale; that, as petitioner is informed and believes, many other persons holding bonds of said class, amounting to several hundred thousand dollars, have never assented to such agreement or application, or in any manner waived their rights to an application of said fund to the payment of their several bonds, and all the

sums due thereon, in full; that the petitioner and said persons, nor any of them, were parties to the action when said decree was entered; that in law and equity they are entitled to receive payment in full of the bonds held by them out of said fund; that the petitioner has reason to fear, and does fear, that if said fund is now distributed by the receiver of the court to the several complainants and intervenors named in the decree, in the manner and form therein directed, such distribution will inflict irreparable injury upon the petitioner and those who hold bonds entitled to priority over said complainants and intervenors in the application of said fund, by scattering the same and placing a considerable portion thereof in the hands of persons whose pecuniary responsibility is unknown, and some of whom reside in foreign countries beyond the jurisdiction of the courts of the United States.

That your petitioner, pursuant to the advice of counsel, has commenced, and is now prosecuting, in the supreme court of the city and county of New York, an action against the said Mississippi & Missouri River Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Willson, The Chicago, Rock Island & Pacific Railroad Company, Thomas E. Walker, & Franklin Haven; that in his complaint, in said cause, he substantially stated the allegations hereinbefore con-
206 tained, excepting those touching this cause and the decree herein; that in said complaint he prays the judgment of the court against said defendants; that the said bonds of your petitioner, and of all others who have not assented to the arrangement and agreement above mentioned, with all interest accrued thereon, may be paid in full out of the proceeds of said sale, and that no part of said proceeds be paid to the stockholders of the said Mississippi and Missouri River Railroad Company, or to the general creditors thereof, until the bonds of the plaintiff and like non-assenting bondholders shall have been paid in full; that he is now prosecuting said suit, and is willing that the plaintiff and intervenors herein may come in and defend the same.

That petitioner is informed & believes that an appeal has been taken from the decree in this court in this cause to the Supreme Court of the United States, but that no supersedeas bond has been filed in said appeal, & that the filing of such a bond now would not be effectual to suspend the execution of the decree.

Wherefore plaintiff prays the court to make an order directing the receiver in this cause to convert the bonds and c'upons which now are or may hereafter come into his possession, under & by virtue of said decree, into money in the manner directed in said decree, and that he refrain from distributing the same to the complainants and intervenors herein under the directions of said decree, until the final disposition of this cause in the Supreme Court of the United States, & of the cause pending in the supreme court of the city and county of New York, or if the court shall deem this relief improper under the circumstances of the case, it will make an order restraining the distribution of said fund, and directing that upon proper pleadings to be filed in this court, an issue be joined between this petitioner and the other holders of said bonds who have never assented to said agreement and arrangement, and the complainants and intervenors herein to determine and settle the priorities of the right of the parties to an application of said fund.

And your petitioner will ever pray.

FREDERICK A. FOSTER,
By WITHROW AND WRIGHT,
His Solicitors.

UNITED STATES OF AMERICA, *ss :*

Thomas F. Withrow, being duly sworn, deposes and says that he is one of the solicitors for Frederick A. Foster, the petitioner above set out; that he has been authorized to represent the said petitioner in this court, in the proceedings touching the subject-matter of said petition; that he has authority to present said petition to this court; that he has read the same & knows the contents thereof; & that the allegations therein contained are true, as he verily believes.

THO. F. WITHROW.

Subscribed and sworn to by Thomas F. Withrow, before me, this 27th day of Oct., 1868.

W. G. WOODWARD, *Clk.*

(Endorsed :) Filed October 27, 1868.

W. G. WOODWARD, *Clerk.*

The record in the case of Thomas C. Durant, Jacob S. Wetmore, & Robert B. Minturn, jr., vs. The Mississippi & Missouri Railroad
207 Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, & John Webber, to which reference is made in the petition of said Frederick A. Foster, is as the same remains of record in the office of said clerk in the words and figures following, to wit:

On this day, to wit, the fifth day of February, A. D. 1866, on the application of Thomas C. Durant, Jacob S. Wetmore, & Robert B. Minturn, jr., by John N. Rogers, their solicitor, a writ of subpœna was issued out of the office of the clerk of the circuit court of the United States for the district of Iowa, which writ, with the return of the marshall of the United States for said district thereon, is in the words & figures following, to wit:

UNITED STATES OF AMERICA,
District of Iowa, ss :

The President of the United States to The Mississippi & Missouri Railroad Company, a corporation organized under the laws of the State of Iowa, Horatio G. Angle, John F. Ely, C. R. Morse, Andrew Taylor, Thomas Leader, Mary J. McAninch, and David W. Coates, citizens of the State of Iowa, and Elisha P. Reynolds, a citizen of the State of Illinois, greeting:

We command you, and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday, it being the fifth day of March next, (A. D. 1866,) to answer to the bill of complaint of Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., citizens of the State of New York, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment or decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default,

To the marshall of the district of Iowa; returnable on the first Monday of March, A. D. 1866.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the U. S., at Des Moines, this the fifth day of February, A. D. 1866, and of the independence the year.

[SEAL.]

W. G. WOODWARD, *Clerk*,
By J. BAUSMAN, *Deputy.*

MEMORANDUM.—The within-named defendants are notified that, unless they enter their appearance in the clerk's office in said court at Des Moines aforesaid, on or before the day to which the above writ is returnable as above stated, the bill of complaint will be taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk*,
By J. BAUSMAN, *Deputy*.

[50 cts. U. S. revenue affixed & cancelled.]

Received the within subpœna on the day of February, 1866. Served personally the within subpœna by reading the same, and leaving copies with H. G. Angle & J. F. Ely, of Cedar Rapids, Linn Co., Iowa, on the ninth day of February, 1866.

PETER MELENDY,
U. S. Marshall for District of Iowa.

Service 2 copies	$4 00
Copy	1 00
140 mileage	8 40
	$13 40

208 (Endorsed:) Returnable to rule day, 1st Monday in March. Filed March 5th, A. D. 1866.

W. G. WOODWARD, *Clerk*.

On the same day, to wit, on the fifth day of February, A. D. 1866, came Thomas C. Durant, Jacob S. Wetmore, & Robert B. Minturn, jr., by John N. Rogers, their solicitor, & filed in said clerk's office their bill, which bill is in the words and figures following, to wit:

To the judges of the circuit court of the United States for the district of Iowa:

Thomas C. Durant, of Brooklyn, in the county of Kings, and State of New York, & Jacob S. Wetmore & Robert B. Minturn, junior, of the city, county, & State of New York, all being citizens of the State of New York, bring this their bill against The Mississippi & Missouri Railroad Company, a corporation duly organized under and by virtue of the laws of the State of Iowa, and having its principal place at Davenport, in the county of Scott, & State of Iowa; Horatio G. Angle & John F. Ely, of Cedar Rapids, in the county of Linn, & State of Iowa; R. C. Morse, Andrew Taylor, & Thomas Leader, of Marengo, in the county of Iowa, State of Iowa; Mary J. McAninch, of the county of Muscatine, in the State of Iowa; David W. Coates, of Homestead, in the county and State of Iowa, all being citizens of the State of Iowa, and Elisha P. Reynolds, of Rock Island, in the State of Illinois, a citizen of the State of Illinois.

And thereupon your orators complain & say that the said Mississippi & Missouri Railroad Company is a corporation organized under chapter 43d of the Code of Iowa, enacted February 5th, A. D. 1851, for the purpose of building, maintaining, & operating a railroad from the eastern line of the State of Iowa, at or near Davenport, in the county of Scott, to the west line of the said State, at or near Council Bluffs, with power to construct, maintain, and use a branch railroad from the main line of said road southwesterly, by way of Muscatine, to the southern or west-

ern boundary of Iowa, or both, and with full power to borrow money for the purpose of building, maintaining, and operating such railroads, and on the other property and franchises of said company, to secure the repayment of the same.

And your orators further allege that said company has constructed accordingly a railroad extending from the east line of the State of Iowa, at Davenport, aforesaid, westwardly to Kellogg, in the county of Jasper, in the State of Iowa, a distance of one hundred & thirty-five miles, or thereabouts, and also a branch railroad connecting with said main line at Wilton, in the county of Muscatine, in said State, and extending southwestwardly, by the way of the city of Muscatine, to Washington, in the county of Washington, in said State, a distance of fifty-seven miles, or thereabouts, and is in pos'session of, and operating said lines of railroad, with the stations, depot grounds, & buildings connected with and appurtenant to the same; & is also the owner & in the pos'session and use of a large amount of rolling-stock, (so called,) consisting of locomotive-engines, passenger and freight cars of various kinds used upon said road, and appurtenant to the same.

And your orators further allege that by an act of the general assembly of the State of Iowa, approved July 14th, 1856, entitled "An act to accept of the grant & to carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to and
209 in the construction of railroads in the said State,' approved May 15th, 1856," and by which the lands, rights, powers, and privil*e*dges granted to and conferred upon the State of Iowa by the said act of Congress were accepted upon the terms, conditions, & restrictions contained in said act of Congress, so much of the said lands, interests, rights, powers, & privil*e*dges as were granted and conferred by said act of Congress to aid in the construction of a railroad from Davenport via Iowa City & Fort Des Moines to Council Bluffs were disposed of, granted, and conferred to and upon the said Mississippi & Missouri Railroad Company, subject to the conditions & restrictions in said act contained. And the said company did assent to, and accept the provisions of said act by a written instrument under their corporate seal, and signed by the proper officers thereof, which was filed & recorded in the office of the Secretary of State of Iowa, within ninety days after the passage of said act, as provided by the thirteenth section thereof.

And your orators further allege that, under and by virtue of said acts, the said Mississippi & Missouri Railroad Company became entitled to large quantities of land in the State of Iowa in alternate sections along the line of said road, as provided by said act of Congress, and subject to the conditions and restrictions in said act contained; and that by an act of the general assembly of the State of Iowa, approved January 28th, A. D. 1857, & supplemental to said act of July 14th, A. D. 1856, the said company were fully authorized & empowered to make such disposition of the lands granted by said act of July 14th, 1856, by mortgage or deed of trust, as might be deemed proper for the purpose of securing any amount of construction bonds n*e*esessary for the completion of said road, which bonds should bear interest, at a rate not to exceed ten (10) per cent. per annum, and to sell said bonds for the best price that could be procured; and by said act it was further enacted that any mortgage or deed of trust made upon the lands or road or property of said company should bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling-stock, provided that nothing contained in said act should be so construed as in any

manner to interfere with, change, or modify the rights of said State, or of the United States, to any lands granted by Congress to said State, and by said State to certain railroad companies therein, as a security for the completion of said roads, or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by said grant made by the United States to said State, and by the grant by said State to said companies, all of which by reference to said acts will more fully and at large appear.

And your orators further allege that the said Mississippi & Missouri Railroad Company did, on or about the tenth day of December, A. D. 1861, make, execute, and deliver to your orators a certain indenture of mortgage under the corporate seal of said company, and signed in its behalf by its president and secretary, dated the day last aforesaid, wherein and whereby it was recited that the said company desiring to secure the payment of monies then owing for principal and interest on account of the cost of constructing their railroad; and to borrow money for the further construction & the completion & equipment of the same, did therefore, and for the purposes aforesaid, propose to issue a series of mortgage bonds, to be denominated second mortgage construction bonds, to the amount of seven hundred thousand dollars, five hundred of which bonds should be for the sum of one thousand dollars each, and four hundred for the sum of five hundred dollars each, bearing interest at the rate of seven per cent. per annum, payable semi-
210 annually, on the first day of January and July of each year, and the principal reimbursable on the first day of January, A. D. 1882, to be secured by a mortgage or deed of trust, covering the entire property and franchises of said company, together with all its lands then owned, or which might thereafter be acquired by said company, which said mortgage would be a third lien upon all that portion of the said road lying between Davenport and Iowa City, & Davenport & Muscatine, and a second lien on all that portion of the main trunk lying between Iowa City & Council Bluffs, & of the Oskaloosa branch lying between Muscatine & Oskaloosa, as also upon the lands of said company as thereinafter specified.

And thereupon the said Mississippi & Missouri Railroad Company did in and by the said indenture of mortgage for securing the payment of the sums of money mentioned in the said series of second mortgage construction bonds or obligations, & the interest thereon, & also for and in consideration of the sum of one dollar in hand by your orators, did grant, bargain, sell, convey, and confirm unto your orators, and to their survivors or survivor, and to his or their successor or successors, who might be appointed or selected, in the manner and according to the conditions thereinafter set forth, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad, and necessary for the uses and purposes thereof, then owned or thereafter to be acquired by said company, constituting or belonging to their railroad extending from Davenport aforesaid to Muscatine, and to Council Bluffs on the Missouri River, and also on that portion of their line of road extending from Muscatine to Oskaloosa, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever appurtenant to the said railroad, and all the rolling-stock and personal property of the said Mississippi & Missouri Railroad Company properly belonging to their road and appertaining thereto, and all the franchises, rights, and privileges appertaining to the same, then existing or thereafter to be acquired.

Also, all the right, title, interest, claim, or demand which said railroad

company then had or should thereafter acquire in and to all public lands of the United States, granted by the act of Congress aforesaid to the State of Iowa, and by the general assembly of said State by the act aforesaid of July 14th, 1856, to the said railroad company, with all the estate, right, title, and interest, property & poseession, claim or demand whatever, at law or in equity, of the said railroad company in and to the same, and each and every part and parcel thereof, excepting, saving, & reserving to the said company all lands then owned or thereafter to be acquired by them, which might not be included in the said grant of public land from the United States, and might not be necessary for the uses and purposes of said railroad and the depots & rights of way therefor:

To have and to hold all and singular the lands and premises thereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto your orators or the survivor of them, and their successors appointed or selected in manner thereinafter provided, for the uses & purposes, and upon the trusts, terms, and conditions in said indenture set forth and declared.

Provided always, and upon the express condition, that if the said railroad company should well and truly pay or cause to be paid to the holders of the said second mortgage construction bonds, & every of them, the principal sums of money therein mentioned, according to the true intent & meaning thereof, with the interest thereon, at the
211 times and in the manner as thereinbefore provided, that then and from thenceforth said indenture, and the estate thereby granted, should cease & determine, and all the right, title, & interest in and all property thereby conveyed to your orators, not then disposed of by them, under the powers thereby conferred upon them, should revert to and rest in the said railroad company.

And in and by said indenture it was further witnessed, that the same, & the said series of second mortgage construction bonds or obligations, were made, executed, & delivered upon the terms, conditions, & agreements following, that is to say:

First. That the said trustees, your orators, or any of them, or their successors, might at any time be superseded by any number of the holders of said second mortgage construction bonds, who should be the owners of a majority in amount of all the said series of bonds secured by said indenture, & who should unite in the designation of such successor or successors; also that the number of such trustees might, in like manner, be reduced to two or one trustee, as the holders of a majority in amount of said series of bonds might elect.

Second. That said railroad company and its successors should & would pay, or cause to be paid, all taxes, charges, rates, levies, and assessments imposed, assessed, or levied, or which might thereafter be imposed, assessed, or levied upon the premises, franchises, or property thereby mortgaged, conveyed, and assigned, or intended so to be, and should and would, at its own proper cost, expense, & charges, do or cause to be done all acts & things necessary or proper to be done or performed, in order to preserve & keep valid and intact the lien or incumbrance upon all & singular the aforesaid premises, property, & franchises thereby created or intended so to be; and further, that said railroad company and its successors should not & would not at any time thereafter take, or in any way or manner use, interpose, or avail itself of any extension laws, stop laws, valuation laws, appraisement laws, or any other laws of the State of Iowa, then in force or thereafter to be enacted, & in force in said State, and which should alter, affect, or impair, or

which should be designed, intended, or construed to alter, affect, or change the rights and interests of your orators, as therein declared, and which should in any way impede or obstruct the mode or manner of realizing, perfecting, or enforcing the rights and interests of any of the holders & owners of said second mortgage construction bonds, as therein provided, or which should affect, change, or alter the time, place, mode, means, or manner of perfecting, enjoying, or enforcing any of such rights or interests, as the same were therein declared.

Third. That the said railroad company should and would well and truly pay the said sums of money in the said second mortgage construction bonds mentioned, together with the semi-annual interest due or to become due thereon, at the rate of seven per cent. per annum, at the times, in the manner, & at the place specified therein; and further, said railroad company therein and thereby did covenant and agree, that in case it should for the space of thirty days make default in the payment of the semi-annual interest, due or to become due, upon any or either of said second mortgage construction bonds, then after the lapse of said thirty days, the whole principal sum mentioned in each and all of said second mortgage construction bonds should forthwith become due and payable, & *and* the lien or incumbrance by said indenture created, for the security & payment thereof, might be at once enforced, anything in the said second mortgage construction bonds, or in said indenture
212 to the contrary thereof, notwithstanding, and that it should & might be lawful, and your orators, & the survivors & survivor of them, & their & his successors or successor, were thereby expressly authorized and empowered, upon the request in writing of a majority in amount of the holders of said second mortgage construction bonds, to enter into and upon, & to take actual pos'ession of all & singular the railroad, premises, franchises, rights, property, real and personal, and effects, by said indenture granted, conveyed, assigned, mortgaged, pledged, transferred, & set over, or intended so to be, as a security for the payment of said second mortgage construction bonds, and by themselves, & by their or his agent or agents, to take & collect, & receive the tolls, earnings, income, and profits thereof, and of every part thereof, or to be derived therefrom, & that they, your orators, & the survivors & survivor of them, and their & his successors and successor, upon the written request as above specified, should and might proceed, and were thereby expressly authorized and empowered, but within such reasonable time as they might deem proper, not less than sixty days, and upon and after public notice by advertisement, of at least eight weeks, in one or more newspapers published in the cities of Davenport, Des Moines, & Iowa City, in the State of Iowa, and the city of New York, in the State of New York, to proceed to sell at public auction in the said city of Davenport, in the State of Iowa, to the highest bidder, as well all and singular the said railroad, rights, & franchises, as all other the property, real & personal, & premises by said indenture granted, conveyed, assigned, mortgaged, pledged, transferred, and set over, or intended so to be, and all benefit and equity of redemption whatsoever of the said railroad company, of and to the same, and every part & parcel thereof, together with the benefit of the franchise belonging thereto, or connected therewith; subject, however, to the prior liens or incumbrance of the hereinbefore-recited several first and second mortgages upon the several divisions of said road, its lands, and other property whatsoever; and as the attorney or attorneys of the said railroad company, for the purpose, & by said indenture duly appointed & constituted, your orators, & the survivors & survivor of them and their & his successors & successor,

should have full power and authority, to make, execute, and deliver to the purchasers or purchaser thereof, good, valid, and sufficient deed or deeds, conveyance or conveyances, assignments, or transfers, in fee-simple, or otherwise, or said railroad, lands, tenements, & real-estate, & of all & singular the said personal and other property, rights, & premises thereby granted, assigned, transferred, or conveyed as aforesaid; which sale so to be made as aforesaid, & which deeds, conveyances, assignments, and transfers, so to be made & delivered as aforesaid, should operate to convey, assign, transfer, and vest in said purchaser or purchasers all the right, title, interest, & estate whatsoever, revisionary or otherwise, of the said railroad company, of, in, & to the premises so sold, conveyed, assigned, or transferred; and which said sale so to be made should be a complete & perpetual bar, both at law and in equity, against the said railroad company, its successors, & assigns, and all persons or parties claiming by, from, or under it or them in anywise or manner whatsoever; and that out of the moneys or proceeds arising either from said tolls, earnings, or receipts of said railroad and premises, or out or from said sale, so to be made as aforesaid, after first deducting the expenses, disbursements, costs, charges, & counsel fees incurred in and about the conducting of said sale, or the running and operating said railroads, as well as all interest due & unpaid upon each and all of the first & second mortgages therein before recited, as they should be
213 entitled respectively, under and by virtue of the seperate divisions upon which said several prior deeds of trust had their respective liens; that they, your orators, & the survivors and survivor of them, their and his successors and successor, should pay such second mortgage construction bonds, or so many as should then be outstanding & unpaid, together with all arrears of interest then due or owing upon the same, rendering or paying over the surplus of all such moneys, if any there should be, to the said railroad company, its successors or assigns.

All of which, by reference to said indenture of mortgage, to which your orators, for greater certainty, crave leave to refer, will fully & at large appear.

And your orators further allege that said indenture of mortgage having been duly acknowledged, was duly recorded in the recorders' offices of the several counties through which said railroad runs, and in which the property covered thereby is situate.

And your orators further allege that said railroad company, in pursuance of their design and intention, as recited in said indenture of mortgage, and for the purposes therein set forth, did execute & issue, under their corporate seal, a series of bonds or obligations so called & known as second mortgage construction bonds, of even date with said mortgage, whereby said company obligated itself to pay to the holders or bearers of said bonds respectively the sums therein expressed, on the first day of January, A. D. 1882, with interest thereon at the rate of seven per cent. per annum, and payable semi-annually on the first days of January and July, in each and every year, until the maturity of said bonds. Said bonds are severally and respectively for the sums of one thousand dollars, or five hundred dollars each, as recited in said mortgage, and the aggregate principal sum secured by the same, actually issued & outstanding, is the sum of six hundred & ninety-five thousand dollars. Said bonds are now held and owned by divers persons, who have purchased the same, and are valid and subsisting obligations against said company to the full amount thereof, with the interest accrued & unpaid thereon.

And your orators further allege that the condition of said indenture of

mortgage has been broken, in this, to wit, that the said Mississippi & Missouri Railroad Company has failed & neglected & refused to pay, or cause to be paid, to the holders of said bonds, or any of them, the semi-annual interest due & payable thereon on the first day of July, A. D. 1865; & also the semi-annual interest due & payable thereon on the first day of January, A. D. 1866, or any part thereof; all the interest on said bonds, or some of them, has been duly demanded, whereby & in pursuance of the provisions of said indenture of mortgage, as hereinbefore set forth, the whole principal sum mentioned in each and all of said bonds has become due & payable, & said bondholders, and your orators in their behalf are entitled to at once enforce the lien, or incumbrance by said mortgage created for the security and payment thereof.

And your orators have been requested by the holders of a majority in amount of said bonds to proceed to enforce and foreclose said mortgage by suit in this court.

And your orators further allege, on information and belief, that said railroad, and other property of said company, covered by the said indenture of mortgage, is subject to the lien of four several other and prior mortgages thereon, executed by said company, to wit: A mortgage dated July , A. D, 1855, to Edward W. Dunham, trustee, covering so much of said railroad as extends from Davenport to Iowa City and Muscatine, and known as the first division of said road, with
214 the rolling-stock procured for and connected with said division, and securing bonds to the amount of one million dollars, bearing interest at seven per cent. per annum, payable semi-annually.

2nd. A mortgage dated July 1, 1856, to Edward W. Dunham, trustee, conveying the same property as said first mortgage, and subject thereto, securing bonds to the amount of four hundred thousand dollars, bearing interest at eight per cent. per annum, and payable semi-annually.

3rd. A mortgage dated July 1, 1856, to Edward W. Dunham, trustee, conveying so much of said railroad as extends from Muscatine to Oskaloosa, and all rolling-stock procured for and connected with the same, or appertaining thereto, securing bonds to the amount of five hundred and ninety thousand dollars, or thereabouts, actually issued, but intended and expressed to secure the amount of one million four hundred and twenty-five thousand dollars, with interest at seven per cent. per annum.

4th. A mortgage, dated May 8th, 1857, to Thomas E. Walker, & Curtis B. Raymond, trustees, conveying said railroad, and property appurtenant thereto, from Iowa City to Council Bluffs, & the rolling-stock belonging to said division of the road; and also all the interest of said company in said lands granted as aforesaid by the United States to the State of Iowa, and by said State to said company; which mortgage is expressed & intended to secure bonds to the amount of seven millions of dollars, of which three millions six hundred and twelve thousand, or thereabouts, are actually issued and outstanding, bearing interest at the rate of seven per cent. per annum.

And your orators further allege, on information and belief, that said railroad company, though in possession of and operating said railroad, and receiving the rents and profits thereof, have not applied and are not applying said rents and profits, over and above the expenses of running and operating said railroad, to the payment of other claims against said company, which were and are not liens on said railroad and other property, or, of liens thereon, are subsequent & subject to the liens of said several mortgages; that the interest of said mortgages is

in arrear, due, and unpaid, whereby the conditions of the same have been broken, and the mortgagees have become entitled to enforce the same and that the amount of indebtedness secured thereby is, by such failure to pay said interest, accumulating, whereby the rights and security of the bondholders, secured by the said mortgage to your orators, are imperilled and put in jeopardy; that the said railroad company is wholly insolvent, and unable to pay its debts and liabilities.

And your orators further allege that the said defendants Horatio G. Angle, John F. Ely, C. R. Morse, Andrew Taylor, Thomas Leader, Mary J. McAninch, David M. Coates, & Elisha P. Reynolds, as your orators are informed & believe, severally and respectively have, or claim to have, some lien upon, or interest in, the said railroad and other property of the Mississippi & Missouri Railroad Company, or some part or parts thereof, by reason of certain judgments recovered by them respectively against said company or otherwise, which several liens or interests, if any, are subsequent to that of said mortgage to your orators, and subject thereto.

To the end, therefore, that the said defendants, if they can, show why your orator should not have the relief hereby prayed, and may, the said Mississippi & Missouri Railroad Company, upon the corporal oaths of its officers, and the said remaining defendants, upon their several and respective corporal oaths, and according to the best and utmost of their
215 several & respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to this your orators' bill:

And that an account may be taken of the amount due upon the said bonds secured by the said mortgage to your orators, both for principal & interest, and that the said railroad company may be decreed to pay the said sum or sums so found due and owing to the holders of said bonds respectively, together with the costs and charges of this suit, and that in default of such payment the said railroad, & roadway, stations, depot lands, and other lands appurtenant to said railroad and necessary for the uses and purposes thereof, together with all locomotives, cars, buildings, machinery, tools, & implements whatever, appurtenant to said railroad, and all the rolling-stock and personal property of the said railroad company, properly belonging to their road and appertaining thereto, and all the functions, rights, and privileges appertaining to the same, and also all the right, title, and interest, claim or demand, of the said railroad company in and to the said lands so granted by the United States, by the State of Iowa, and by said State to said company, and all other property, rights, or interests of whatever description, covered or conveyed by said mortgage, may be sold by and under the direction of a master of this court, at public auction, to the highest bidder for cash; that the money arising from said sale may be brought into court; that there may be paid thereout, first, the costs and charges in this suit incurred, and your orators' necessary and reasonable expenses and disbursements in the execution of the trust conferred upon them by said mortgage, including reasonable and proper fees and compensation of solicitors and counsel in this suit, and secondly, the amounts due upon said bonds for principal and interest, so ascertained as aforesaid, to the holders thereof respectively; that the master or officer, under whose direction said sale shall be made, may execute all necessary and proper deeds and conveyances for effectually conveying to and vesting in the purchaser or purchasers at such sale, the tietle to the said property so sold, and that the said purchaser or purchasers may be put in full & complete pos'session of the said property;

that, from and after such sale, the said defendants and each of them, and all & every person or persons claiming under them, or either of them, subsequently to the filing of this bill, may be forever bound and foreclosed of and from all and every interest, estate, right, claim, or equity of redemption of, in, or to the property and premises so sold as aforesaid, & every part & parcel thereof:

And that, in the mean time and pending this suit, some fit & proper person may, by order of this court, be appointed a receiver to take charge and pos'session of the said railroad, and other property, real & personal, appertaining and belonging thereto, including rolling-stock, and to manage and operate the same under the direction of this court, and to collect & receive the rents and profits thereof, and to apply the same after paying thereout the neesessary expenses of said receivership, and of running and operating said road, to the payment of the said interest on the several mortgages and bonds secured by the same, in the order of their priority, and that the said railroad company, its officers and agents, may be ordered and required, on the appointment of said receiver, to surrender pos'session and control of said railroad & other property to him:

And that your orators may have such further and other relief in the premises as the nature of the case shall require, and as shall be agreeable to equity and good conscience:

May it please your honors to grant unto your orators the most
216 gracious writ of subpœna of the United States of America, to be directed to the said Mississippi & Missouri Railroad Company, Horatio G. Angle, John F. Ely, C. R. Morse, Andrew Taylor, Thomas Leader, Mary J. McAninch, David W. Coates, & Elisha P. Reynolds, thereby commanding them, and every of them, at a certain day and under a certain penalty therein to be inserted, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet; and your orators shall every pray, &c.

JACOB S. WETMORE,
JOHN N. ROGERS,
Solicitor' for Plaintiffs.

UNITED STATES OF AMERICA, STATE OF NEW YORK,
City and County of New York, Southern District of New York:

Jacob S. Wetmore, being duly sworn, says that he is one of the plaintiffs in the foregoing bill; that he has read the same and knows the contents thereof; and that the said bill is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be.

Subscribed & sworn to before me this 31st day of January, 1866.
JAMES BETTS METCALF,
U. S. Commissioner, So. Dist. of New York.

(Endorsed:) Filed Feb'y 5, 1866.
W. G. WOODWARD, *Clerk, C. C.*
By J. BAUSMAN, *Dep'ty.*

On this day, to wit, the fifth day of March, A. D. 1866, came said plaintiffs, by John N. Rogers, their solicitor, & filed in said clerk's office the affidavit of Frederick P. James, David M. Hughes, and John

P. Yelverton; which affidavit is in the words and figures following, to wit:

Circuit court of the United States, district of Iowa.

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr., *vs.* THE MISSISSIPPI & MISSOURI RAILROAD COMpany & als. } In equity.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City & County of New York, ss:

Frederick P. James, David M. Hughes, & John P. Yelverton, of said city of New York, being duly sworn, depose and say that they are jointly the holders of such of the bonds issued by the said Mississippi and Missouri Railroad Company known as the "second mortgage construction bonds," dated December 10th, 1861, and secured by the mortgage executed by said railroad company to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., which is set forth in the bill in this suit, & sought to be foreclosed herein, as are specified by the numbers thereof in the list or schedule hereto annexed, marked A. Said bonds are respectively for one thousand dollars and five hun-
217 dred dollars each as specified in said schedule & are payable to C. W. Durant, or bearer, January 1st, 1882, with interest at seven per cent. per annum, payable semi-annually on the first days of January and July in each year. A copy of one of said bonds is hereto annexed, marked B.

Deponents further say that the interest on said bonds due July 1st, 1865, and January 1st, 1866, is due & wholly unpaid, and deponents are the holders of the c'upons therefor; that the interest due at those days respectively on all the others of said bonds secured by said mortgage (which amount in the aggregate to the principal sum of six hundred & ninety-five thousand dollars) is also due and wholly unpaid, although the same has been demanded.

Deponents further say that the interest on the bonds of said railroad company secured by four several other mortgages prior in date to the above-mentioned mortgage, as the same are set forth in the bill of complaint herein, to wit, two mortgages to Edward W. Dunham, trustee, on the first division of said railroad, extending from Davenport to Iowa City and Muscatine; another mortgage to the same trustee on the "Oskaloosa branch" (so called) of said railroad, running westwardly from Muscatine, and another mortgage to Curtis B. Raymond and Thomas E. Walker, trustees, on the portion of said railroad running westwardly from Iowa City and to be extended to Council Bluffs, is also in arrear, due, and unpaid for the period of heretofore; that the bonds secured by said four mortgages amount in the aggregate to fifty-six hundred and two thousand dollars, to wit: Amount of bonds secured by first mortgage on eastern division, dated July 1st, 1856, one million dollars; amount secured by second mortgage on eastern division dated , four hundred thousand dollars; amount secured by mortgage on Oskaloosa branch, five hundred and ninety thousand dollars; amount secured by mortgage on road west of Iowa City, three million six hundred and twelve thousand dollars.

Deponents further say that this suit is brought at their instance and

request; that the said railroad company is utterly insolvent & unable to pay its debts.

D. M. HUGHS.
F. P. JAMES.
JOHN P. YELVERTON.

U. S. AMERICA, *So. Dist. of New York, ss:*

FEBRUARY 28, 1866.

David M. Hughes & Frederick P. James and John P. Yelverton, being severally duly sworn, each for himself deposes and says that he has read the foregoing affidavit, & knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information & belief, and as to those matters he believes it to be true.

JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of New York.

(A.)

Number of bonds, Mississippi and Missouri Railroad Company, "2nd mortgage construction," surrendered to J. P. Yelverton, F. P. James, and D. M. Hughes, trustees.

201, 202, 203, 204, 205, 206, 207, 208, 211, 212, 213, 214, 215, 216,
218 217, 301, 302, 303, 484, 485, 37, 44, 135, 190, 440, 459, 480, 486, 487,
488, 18, 52, 53, 54, 55, 56, 57, 58, 59, 65, 66, 67, 68, 72, 73, 76, 77, 78,
80, 81, 82, 83, 84, 85, 86, 95, 96, 97, 98, 99, 273, 341, 342, 343, 344, 345, 497,
45, 46, 47, 482, 483, 322, 323, 324, 394, 395, 396, 397, 398, 399, 400, 320,
321, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365,
366, 367, 368, 377, 378, 371, 372, 373, 374, 375, 376, 369, 370, 436, 437, 438,
439, 441, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 27,
28, 29, 30, 31, 32, 33, 34, 35, 38, 226, 227, 248, 333, 334, 335, 336, 337, 434,
312, 313, 314, 315, 308, 309, 310, 311, 350, 431, 432, 133, 317, 318, 319, 349,
257, 258, 392, 393, 134, 254, 255, 256, 249, 251, 252, 253, 481, 489, 184, 185,
329, 330, 331, 430, 294, 295, 296, 328, 173, 174, 188, 189, 121, 445, 167, 171,
172, 424, 101, 102, 103, 261, 122, 421, 422, 423, 109, 110, 111, 112, 104, 262,
106, 107, 108, 118, 119, 120, 127, 113, 105, 115, 116, 117, 218, 219, 220, 230,
128, 114, 130, 131, 132, 236, 237, 238, 239, 231, 129, 233, 234, 235, 306, 307,
379, 380, 240, 232, 260, 304, 305, 229, 92, 93, 94, 160, 241, 162, 274, 228, 259,
332, 75, 347, 221, 161, 223, 224, 225, 450, 451, 458, 325, 348, 222, 447, 448,
449, 384, 386, 387, 391, 326, 446, 381, 382, 383, 327—289 of $1,000 00.

530, 531, 533, 535, 536, 537, 595, 625, 655, 656, 657, 658, 659, 660,
664, 666, 775, 776, 777, 840, 717, 718, 719, 720, 721, 773, 704; 705,
706, 707, 708, 709, 710, 711, 712, 713, 857, 626, 627, 628, 629, 630,
631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645,
819, 820, 821, 661, 662, 729, 521, 522, 667, 671, 601, 603, 651, 665, 747,
751, 752, 753, 754, 771, 523, 524, 525, 526, 527, 528, 529, 534, 594, 596,
604, 663, 672, 673, 674, 675, 746, 774, 779, 784, 791, 792, 801, 802, 803,
804, 805, 806, 807, 808, 815, 816, 817, 818, 851, 869, 870, 879, 880, 882,
646, 647, 648, 649, 650, 676, 668, 669, 670, 501, 502, 503, 504, 505, 506,
507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 565,
564, 563, 566, 567, 568, 569, 570, 571, 572, 605, 606, 607, 608, 687, 688,
689, 690, 691, 692, 759, 766, 768, 769, 770, 780, 781, 782, 785, 790, 809,
810, 811, 812, 813, 814, 761, 864, 551, 552, 553, 554, 555, 556, 557, 558,
559, 560, 561, 562, 609, 610, 611, 612, 798, 800—202 of $500.

Summary.

289, $1,000 each	$289,000
202, 500 "	101,000
	$390,000

The bonds numbered below have been surrendered, additional to those given above:

191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 70, 71, 74, 79, 100, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 339, 340, 346, 8, 9, 10, 11, 12, 13, 14, 15, 17, 69, 279, 280, 168, 169, 170, 176, 177, 263, 264, 265, 299, 300, 36, 149, 150, 151, 60, 61, 62, 63, 64, 20, 21, 22, 25, 26, 16, 19, 175, 297, 298, 278, 277, 6, 7, 48, 49, 50, 23, 24, 51, 87, 88, 89, 90, 91, 153, 163, 164, 166, 186, 266, 267, 268, 269, 270, 271, 272, 275, 276—100 of $1,000.

841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 685, 865, 885, 686, 593, 716, 532, 700, 701, 702, 703, 714, 715, 738, 755, 756, 757, 760, 767, 833, 834, 835, 836, 837, 838, 839—36 of 500.

(B.)

UNITED STATES OF AMERICA, *State of Iowa:*

Mississippi and Missouri Railroad Company, 2nd mortgage construction bond.

No. . $1,000 00.

219 The Mississippi and Missouri Railroad Company acknowledge themselves to owe to C. W. Durant, or bearer, one thousand dollars, which sum said company promise to pay to the said C. W. Durant, or the holder hereof, at their office in the city of New York, on the first day of January, 1882, and also interest thereon, at the rate of seven per cent. per annum, semi-annually, on the first day of each January and July ensuing the date hereof, until the said principal sum shall be paid, on the presentation of the annexed interest-warrants at the office of the company, in the city of New York.

The payment of this bond is secured by a deed of trust, or mortgage, upon the said railroad of the company, and upon the lands granted to aid in its construction, as specified in said deed of trust, or mortgage, and in the annexed certificate of the trustees.

In testimony whereof the said company has hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, this tenth day of December, 1861.

[SEAL.] JOHN A. DIX, *Pres't.*
(Signed) H. PRICE, *Secretary.*

The undersigned trustees do hereby certify that The Mississippi and Missouri Railroad Company have executed to us a deed of trust, or mortgage, subject to the mortgages already existing on the different divisions of said road, purporting to convey their road and equipments, and all appurtenances thereto, from the city of Davenport to the city of Council Bluffs, and to Washington, in the State of Iowa, and also all the right, title, & interest which the said company now have or shall hereafter acquire in and to all public lands of the United States granted

by acts of Congress approved May 15th, 1856, to the State of Iowa, and by the general assembly of the State of Iowa, by act approved July 14th, 1856, granted to the Mississippi and Missouri Railroad Company, as specified in the said instrument, in trust, for the benefit of the holders of their bonds of similar tenor as the foregoing, except that part of the same are for $500 each, and part for $1,000 each issued and to be issued to an amount not exceeding in all seven hundred thousand dollars, with power to take pos'session of said railroad, its equipments and appurtenances, and sell or use the same, or any part thereof, in case of a default in paying the interest or principal of said bonds, as in manner provided for in said deed of trust, or any of them, and with power to sell the lands so conveyed, and apply the proceeds to the payment of said bonds; and that the foregoing is one of the several bonds described in and secured by said deed, and that we have caused the said deed to be recorded in the several counties through which the said road passes, and in which said lands are situated.

(Signed) THOMAS C. DURANT,
JACOB S. WETMORE,
Trustees.

Copy of c'upon.

The Mississippi and Missouri Railroad Company will pay the bearer, at their office, in the city of New York, on the first day of January, 1882, thirty-five dollars for interest due that day on their bond No. 1.
$35.

(Signed) H. PRICE, *Sec'y.*

(Endorsed:) Filed March 5th, 1866.
W. G. WOODWARD, *Clk.*
By J. BAUSMAN, *D'p'ty.*

On the same day, to wit, on the fifth day of March, A. D. 1866,
220 came the plaintiffs, by John N. Rogers, their solicitor, & filed in said clerk's office the affidavit and exhibits of David M. Hughes, in said cause; that Exhibit B, appended to said affidavit, is a copy of "Proceedings of a meeting of bond and stock holders of the Mississippi & Missouri Railroad Company, held October 18th, 1865, & statement of General John A. Dix;" a full, true, & correct copy of which appears in this transcript, beginning at folio 203 thereof, and said affidavit and Exhibit A, thereto appended, are in the words & figures following, to wit:

Circuit court of the United States, district of Iowa.

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr.,
vs.
THE MISSISSIPPI & MISSOURI RAILROAD COMpany & als.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City & County of New York, ss:

David M. Hughes, being duly sworn, saith that, on or about the first

day of July, eighteen hundred & sixty-two, the said company were unable to pay, and were indebted for interest on all their bonds.

That, being so unable to pay said interest, they obliged the holders of the said bonds to fund their interest and cu'pons due according to a certain agreement hereto annexed, marked A, and that said company issued to said holders for said interest income bonds to a large amount, which income bonds have not been paid, and interest on the same is due from the first day of January, 1865, to January, 186 , and that said company are unable to pay the same.

Deponent further saith that said company has recently called a meeting of its stockholders in the city of New York, and laid before them the condition of the said company, and did there state and represent that said company could not pay in full the obligations of said company, and did advise the said stockholders and bondholders of every description to sell all their securities and all the property of said company upon the following terms mentioned in the annexed Schedule B.

That the pay for the same was to be in other securities and not in cash.

That the officers of said company are now endeavoring to carry out the terms of said proposition for a sale of the said property of said company to The Rock Island Railroad Company, and that B. Wilson, John Elliott, and George W. Stanton are a committee appointed for the purpose of consum'ating such an arrangement, and that by this plan of sale it is attempted to oblige the holders of the bonds mentioned in the suit herein to sell their said bonds at the rate of thirty cents on the dollar, & to loose all interest due.

Deponent further saith that, on or about or during the years 1862, 1863, 1864, & 1865, the said company became indebted to the Rock Island Railroad Company in a large amount of money, viz., to the amount of six hundred thousand dollars, and that being so indebted and with no means to pay the same they gave up the use & management of the said road to the Rock Island Railroad Company, allowing them to fix the tariffs on the two roads, conjointly, to run the said roads as one, to receive all the income of the same, and apply the same to their own use and to the liquidation of their own debts.

That the officers of the said Mississippi and Missouri Railroad
221 Company had no control or management of the said road; that no funds were paid into the hands of the treasurer of the said Mississippi & Missouri Railroad Company; and that all the business of said road was done in the interest of the Rock Island Railroad Company, & greatly to the prejudice of the interest of the said Mississippi & Missouri Railroad Company, and to the entire neglect & refusal to devote any of the proceeds for the payment of the interest on the various bonds of the said Mississippi & Missouri Railroad Company.

D. M. HUGHES.

FEBRUARY 28, 1866.

U. S. AMERICA, *So. Dist. of New York, ss:*

David M. Hughes, being duly sworn, deposes and says that he has read the foregoing affidavit, and knows the contents thereof; that the same is true of his own knowlege, except as to the matters therein stated upon information & belief, and as to those matters he believes it to be true.

JAMES BETTS METCALF,
U. S. Commissioner, So. Dist. of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of James Betts Metcalf, whose name is subscribed to the annexed affidavit, and the signature of the same is in his proper handwriting; and I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name & affixed the seal of said circuit court, this 28th day of February, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

A.

Whereas the Mississippi and Missouri Railroad Company is embarrassed in its financial abilities and unable, from its earnings at present, to meet its floating debt and the interest due on the bonds issued on the different sections of its road;

And whereas, upon the completion of said road from Marengo to Grinnell, upon which portion a large amount of money has been already expended, the said company will be entitled to receive from the Government of the United States a large amount of land;

And whereas the early construction and completion of said road to Grinnell, by the increase of business to be derived therefrom, and the posession of the additional quantity of land, is of vital importance to the holders of bonds secured by mortgage on the several sections of the road, in giving a permanent value to the same;

And whereas the company cannot dispose of its securities except at a sacrifice ruinous to themselves & unjust to the present bondholders, and has no means of providing the funds neeessary to complete the road as aforesaid, except by a pledge of the future earnings of the road
222 which are applicable properly to the payment of interest on the bonds of the company:

Now, therefore, we, the said Mississippi and Missouri Railroad Company, and the undersigned holders of the bonds of the said railroad company, of the class and to the amount set opposite our names, or representing the same by legal authority, do each of us, for him, her, & themselves severally and mutually, covenant and agree as follows, namely:

1st. That the holders of the bonds of the Oskaloosa division, and the holders of the first mortgage first division bonds, shall receive for their c'upons, past due and unpaid, including c'upons of July, 1862, and the three c'upons next to become due, including that of January, 1864, income bonds to be issued by said railroad company, payable in eight years, with interest half-yearly at the rate of seven per cent. per annum, from the time when said c'upons became due; said c'upons shall not be considered cancelled, but shall be held by Richard Irvin, of the city of New York, as trustee for all parties interested, as a security collateral to said income bonds, and until the same are paid, or the holders of said bonds shall, at their option, and in place of said income bonds, receive for said three c'upons next to become due first mortgage construction bonds of said company at par, and for the four c'upons past due

second mortgage construction bonds at par, which bonds shall be in full payment of said c'upons. After said road is finished to Grinnell, said c'upons shall be delivered up to said company on the first day of September, 1863, provided said road is finished to Grinnell within the time limited, as aforesaid, and until that time said c'upons shall be held by said Richard Irvin, as security collateral to said construction bonds, and to be delivered to the depositors respectively, in case said road is not finished to Grinnell by the first day of September, 1863; said option shall be decided by each party at the time of signing these presents.

The said road shall be finished and in running order to Grinnell by the first day of September, 1863. If the road is not finished to Grinnell at that time, or if the interest of the income bonds issued for any class of c'upons is not paid when it is due, then the said c'upons of such class shall, at the option of the depositors, be returned to them respectively, and the said bondholders shall be at liberty to use all their legal remedies, by foreclosure or otherwise, for the collection of their c'upons in the same manner as if said c'upons had not been funded, or this arrangement agreed upon; and in such case the bonds so received by the bondholders for said c'upons may still be held by them as collateral security for the payment of said c'upons.

The said company, with all parties hereto, hereby agree that the earnings of said road from the first day of July, 1862, to the first day of January, 1864, after paying all ordinary and proper expenses incurred in operating and keeping in repair the said road, rolling-stock, and building during the time specified, and the interest due on income bonds issued for said c'upons, shall be applied to the construction and completion of said road to Grinnell, and to no other purpose; and said company further agree that they will keep, or cause to be kept, correct and detailed accounts of all the income & expenditures of said road from July 1st, 1862, to January 1st, 1864, which shall in monthly statements, upon the application from time to time of any holder or holders of said bonds to the amount of $100,000, be exhibited to them at the principal office of the company in the city of New York.

In case of any attempt to foreclose any mortgage upon said
223 road by any bondholder legally authorized and not parties hereto, or any attempt by judgment creditors to sell said road or any of its property before the said first day of January, 1864, the said c'upons shall retain their respective liens on the said road as they now exist.

It is understood and agreed that the company shall retain the first three c'upons to become due on the bonds which any of the above-named bondholders are to receive for their c'upons as aforesaid, deducting the amount of the same from the price of the bonds.

This agreement and arrangement shall not be considered binding on the parties who shall subscribe the same until the signatures to the same represent more than one-half in amount of the said bonds of the first division, nor until the said company shall have executed the same, nor unless the same shall be consumated by the first day of October, 1862.

The legal expenses & disbursements incurred in making and perfecting this agreement shall be paid by the said company.

In witness whereof the said Mississippi and Missouri Railroad Company have caused these presents to be signed by their treasurer and affixed hereto their corporate seal, and the other parties have hereto subscribed their names, this first day of July, 1862.

(Endorsed:) Filed March 5, 1866.

W. G. WOODWARD, *Clk.*
By J. BAUSMAN, *D'p'ty.*

On this day, to wit, the third day of April, A. D. 1866, came the defendant, The Mississippi and Missouri Railroad Company, by John P. Cook, its solicitor, and filed in said clerk's office a demurrer to plaintiffs' bill; which demurrer is in the words & figures following, to wit:

The State of Iowa, in circuit court United States for the district of Iowa.

THOMAS E. DURANT ET ALS.
vs.
THE MISSISSIPPI & MISSOURI RAILROAD COMpany et als.

This defendant The Mississippi and Missouri Railroad Company, by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto.

And for cause of demurrer showeth that it appears by the said complainant's said bill that Edward W. Dunham, Thomas E. Walker, and Curtis B. Raymond, therein named, are necessary parties to the said bill, inasmuch as it is therein stated that this defendant did, by certain conveyances made to the said Dunham, Walker & Raymond convey to them, by way of mortgage or deed of trust, the certain estate in the said bill particularly described, for the purpose of paying or securing certain debts of the defendant, which said conveyances so made to said Dunham, Walker, & Raymond, are prior and paramount liens on the said railroad of said defendant.

But the said complainants have not made the said Dunham, Walker, and Raymond parties to said bill.

Wherefore, and for divers other good causes of demurrer, this
224 defendant demands the judgment of this honorable court, whether it shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf expended.

The Mississippi & Missouri Railroad Company.

JOHN P. COOK,
Of Counsel for Defendant.

I, John P. Cook, of counsel for the said defendant The Mississippi & Missouri Railroad Company, do hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

JNO. P. COOK,
Of Counsel for Def't.

STATE OF IOWA, *Scott County, ss:*

I, Ebenezer Cook, upon oath, do say that I am the secretary of the Mississippi & Missouri Railroad Company; that I have read the foregoing demurrer and know the contents thereof; and that the same is not interposed for delay.

Witness my hand and the seal of said company.

[SEAL.] EBENEZER COOK.

Sworn to & subscribed by the said Ebenezer Cook, in my presence, and before me, this 22d day of March, A. D. 1866.

Witness my hand & notarial seal, at Davenport, Iowa, this 22d day of March, 1866.

[SEAL.] D. B. SHELLEY,
Notary Public, Scott County, Iowa.

(Endorsed:) Filed April 2, 1866.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the ninth day of May, A. D. 1866, came the plaintiffs, by John N. Rogers, their solicitor, & filed in said clerk's office their motion to dismiss the bill as to certain defendants & to amend the bill; which motion is in the words and figures following, to wit:

Circuit court of the United States, district of Iowa.

THOMAS C. DURANT & ALS.
vs.
THE MISSISSIPPI & MISSOURI RAILROAD COMpany & als.
} In chancery.—May term, 1866.

Now come the complainants, by John N. Rogers, their solicitor, & move the court for leave to dismiss their bill of complaint as to the defendants Horatio G. Angel, John F. Ely, C. R. Morse, Andrew Taylor, Thomas Leader, Mary J. McAninch, David W. Coates, and Elisha P. Reynolds, and so far as said bill affects the said defendants, but not as against the said Mississippi and Missouri Railroad Company; and also for leave to amend said bill by adding new parties defendant.

JOHN N. ROGERS,
Sol'r for Complainants.

(Endorsed:) Filed May 9, 1866.

WOODWARD, *Clerk.*

225 On this day, to wit, the 9th day of May, in the May term, A. D. 1866, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr.,
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et al.

On this 9th day of May, 1866, it being the second day of the May term, on motion of John N. Rogers, esq., solicitor for complainants, it is ordered that complainants have leave to dismiss their bill of complaint as to the following defendants thereto, to wit, Horatio G. Angle, John F. Tracy, C. R. Morse, Andrew Taylor, Thomas Leader, Mary J. McAninch, David W. Coates, and Elisha P. Reynolds, and so far as said bill affects said defendants, saving and reserving the same against the Mississippi and Missouri Railroad Company; and that the said bill be and the same is hereby dismissed accordingly as to all said above-named defendants except as to said railroad company, but not as to said railroad company.

And it is further ordered that the said complainants have leave to amend their said bill by making new parties thereto.

And afterwards, to wit, on the same day, the said complainants come and file their amended bill by which they make new parties, to wit, Ed-

ward W. Dunham, Thomas E. Walker, and Franklin Haven, defendants.

And afterwards, to wit, on the same day, came the defendants Edward Dunham, Thomas E. Walker, and Franklin Haven; and the said Dunham, as trustee & mortgagee for certain bondholders of bonds issued by said railroad company, & secured by mortgages to said Dunham as trustee, files his answer and cross-bill herein; and the said Walker and Haven, as trustees & mortgagees for certain other bondholders, file their answer and cross-bill herein and the original bill and amendment thereto.

On the same day, to wit, the ninth day of May, A. D. 1866, came the plaintiffs, by John N. Rogers, their solicitor, and filed in said clerk's office an amendment to the bill; which amendment is in the words & figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

To the judges of the circuit court of the United States for the district of Iowa:

Thomas C. Durant, of Brooklyn, in the State of New York, and Jacob S. Wetmore and Robert B. Minturn, jr., of the city, county, and State of New York, by leave of the court first had & obtained, now here make and file this their amendment to their original bill of complaint, & on file and pending in this honorable court.

And thereupon your orators complain and say that your orators did, on or about the 5th day of February, A. D. 1866, exhibit their original bill of complaint in this honorable court against The Mississippi & Missouri Railroad Company, a corporation created by and existing
226 under and by virtue of the laws of the State of Iowa, Horatio G. Angle and John F. Ely, of Linn County, in said State of Iowa, and others, thereby stating as therein particularly stated and alleged, and praying as therein particularly prayed.

And your orators further show that, afterwards, to wit, on or about the second day of April, A. D. 1866, the said principal defendant, the Mississippi and Missouri Railroad Company, filed in this hon. court a demurrer to said original bill, alleging as cause of such demurrer, that you orators had failed to make Edward W. Dunham & Thomas E. Walker parties defendant to said bill.

Which said demurrer your orators confess, and now here make the said Edward W. Dunham, the said Thomas E. Walker, and also Franklin Haven, and also Mark Howard, of Hartford, in the State of Connecticut, and John Webber, of the State of Pennsylvania, parties defendant to said bill; the said Dunham and Walker being citizens of the State of New Jersey, and the said Franklin Haven being a citizen of the State of Connecticut, and the said John Webber being a citizen of the State of Pennsylvania.

And your orators further show, by way of amendment, that your orators have lately discovered, as the fact is, that the said Thomas E. Walker & Franklin Haven, as trustees of divers persons who hold bonds issued by the said Mississippi and Missouri Railroad Company, claim to hold a certain deed of trust or mortgage, executed by the said railroad company to secure said bonds, which mortgage is dated the eighth day of May, A. D. 1857, and covers the second division of said railroad, from Iowa City, in Johnson County, Iowa, to Council Bluffs, in Pottawatta-

mie County, Iowa, and the said Walker and Haven claim that there is due and unpaid of the sums so secured by the said mortgage a sum of about four millions three hundred thousand dollars.

Your orators admit the existence of the said mortgage, as they have before admitted in their original bill in this case, and admit that it is prior in date and lien to the mortgage of your orators; but your orators are not advised of the amount due on the security of said mortgage to the various bondholders represented by the said defendants Walker and Haven, and require proof of such amount.

Your orators further show that the said Edward W. Dunham, as trustee of divers persons who hold bond' issued by the said Missouri Railroad Company, claims to hold a certain deed of trust or mortgage executed by the said railroad company to secure said last-named bonds, which said mortgage is dated the first day of July, A. D. 1855, and covers the first division of said railroad, from Davenport to Iowa City and Muscatine, in said State of Iowa, together with the rolling-stock and other property belonging to said first division of said railroad; and the said Edward W. Dunham claims that his said last-mentioned mortgage is a prior lien, and has precedence over your orators' mortgage and lien on said first division, and that there is due to the holders of the bonds so secured the sum of one million of dollars, and a large amount of accrued interest on said sum.

Your orators further show that the said Edward W. Dunham, as trustee of divers persons who hold other bonds issued by the said Mississippi and Missouri Railroad Company, claims to hold a certain other deed of trust or mortgage executed by the said railroad company to secure said bonds, which said mortgage is dated the first day of July, A. D. 1856, and is a second lien upon the said first division of said railroad, extending from
Davenport to Iowa City and Muscatine, together with the rolling-
227 stock and other property appertaining to the said first division of said railroad; and the said Edward W. Dunham claims that said last-mentioned mortgage is a prior lien and has precedence over your orators' mortgage and lien on said division, and that there is due to the holder of the bonds so secured the sum of four hundred thousand dollars, and a large amount of accrued interest on said sum.

Your orators further show that the said Edward W. Dunham, as trustee of divers persons who hold other bonds issued by the said Mississippi & Missouri Railroad Company, claims to hold a certain other deed of trust or mortgage executed by the said railroad company to secure said bonds, which mortgage is dated the first day of July, A. D. 1856, and is a first lien upon the Oskaloosa division of said railroad, extending from the city of Muscatine to Oskaloosa, in said State of Iowa, together with the rolling-stock and other property appertaining to the said division of said railroad; and the said Edward W. Dunham claims that said last-mentioned mortgage is a prior lien and has precedence over your orators' mortgage and lien on said division, and that there is due to the holders of the bonds so secured the sum of five hundred and ninety thousand dollars, & a large amount of accrued interest on said sum.

Your orators admit the existence of the said three last-mentioned mortgages to the said Edward W. Dunham, as trustee, as they have heretofore admitted in their original bill in this case, and admit that the said three mortgages are prior in date & lien to the mortgage of your orators; but your orators are not advised of the amounts due upon the security of the said mortgages to the various bondholders represented by the said defendant Edward W. Dunham, and require proof as to such amounts.

Your orators further show that the said John Webber and Mark Howard, severally and respectively, have or claim to have a lien upon the said railroad and its property by virtue of certain judgments in their favor, on record in this hon. court, against the said Mississippi & Missouri Railroad Company, or in some other way, which said liens or claims, if any there be, are subsequent and inferior to the lien of the mortgage made to your orators as aforesaid and subject thereto.

Your orators further annex hereto a certified copy of the said mortgage to them, set out in their said original bill, marked A, and pray that the same may be taken as a part of their bill of complaint herein.

To the end therefore that the said defendants may show cause, if any they have, why your orators should not have the relief prayed for in this and your orators' original bill of complaint, and that the said defendants may, respectively, full, true, direct, and perfect answers make to all and singular the matters aforesaid, according to the best of their knowledge, information, and belief, your orators hereby waiving the necessity of the answers of said defendants, or either of them, being under the oaths of said defendants, or either of them, and that as fully and particularly as if the matters & charges in this and the original bill of complaint were here again set forth, and the said defendants particularly interrogated thereto:

And that the said property, as described in your orators' original bill of complaint, may be sold as prayed in said original bill, and that from and after such sale the said defendants, and all and each of them, and all & every persons or person claiming by, through, or under them, subsequently to the filing of this bill, be forever barred & foreclosed of and from all and every interest, estate, right, claim, or equity or redemption of, in, or to the property and premises so sold as aforesaid, and every part & parcel thereof:

228 And that your orators have such other and further relief in the premises as the nature of the case shall require, and as shall be agreeable to equity and good conscience:

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the said Edward W. Dunham, Thomas E. Walker, Franklin Haven, John Webber, & Mark Howard, thereby commanding them, & each and every of them, at a certain day & under a certain penalty therein to be inserted, personally to be & appear before your honors, in this honorable court, & then & there answer all & singular the premises, & to stand to, perform, and abide such order and decree therein as to your honors shall seem meet.

And, as in duty bound, your orators will ever pray, etc.

JOHN N. ROGERS,
Solicitor for Plaintiffs.

A.

This indenture of mortgage, made this tenth day of December, in the year of our Lord one thousand eight hundred and sixty-one, by and between The Mississippi and Missouri Railroad Company, a body corporate, duly organized under the laws of the State of Iowa, and domiciled in said State, of the first part, and Thomas C. Durant, of Brooklyn, Kings County, and Jacob S. Wetmore and Robert B. Minturn, jr., of the city, county, and State of New York, of the second part, witnesseth as follows:

Whereas the said parties of the first part, The Mississippi and Mis-

souri Railroad Company, desiring to secure the payment of moneys by them now owing, for principal and interest, on account of the cost of constructing their railroad hitherto, and to borrow moneys for the further construction, and the completion and equipment of the same, do therefore, for the purposes aforesaid, propose to issue a series of mortgage bonds, to be denominated second mortgage construction bonds, to the amount of seven hundred thousand dollars, five hundred of which bonds shall be for the sum of five hundred dollars each, bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July in each year, and the principal reimbursable on the first day of January, A. D. 1882, and shall be in substance and form, as near as may be, like those heretofore issued by this company, and shall be secured by a mortgage or deed of trust covering the entire property and franchises of the company, together with all its lands now owned, or which may hereafter be acquired, by said company, which said mortgage shall be a third lien upon all that portion of the road lying between Davenport and Iowa City, & Davenport & Muscatine, and is a second lien on all that portion of the main trunk lying between Iowa City & Council Bluffs, and of the Oskaloosa branch, lying between Muscatine and Oskaloosa, as also upon all the lands of said company, as hereinafter specified:

Now, therefore, this indenture witnesseth that the said parties of the first part, for securing the payment of the sums of money mentioned in the said series of second mortgage construction bonds or obligations, and the interest thereon, and also for and in consideration of the sum of one dollar in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold,
229 conveyed, and confirmed, and by these presents, do grant, bargain, sell, convey, and confirm, unto said parties of the second part, and to their survivors or survivor, and his or their successor or successors, who may be appointed or selected, in the manner and according to the conditions hereinafter set forth, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad, and necessary for the uses & purposes of the road, now owned, or hereafter to be acquired, by said parties of the first part, constituting or belonging to the railroad of said parties of the first part, extending from Davenport, in the State of Iowa, to Muscatine, and to Council Bluffs, on the Missouri River, and also on that portion of their line of road extending from Muscatine to Oskaloosa, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, appurtenant to the said railroad, and all the rolling-stock and personal property of the said The Mississippi and Missouri Railroad Company, properly belonging to their road, & appertaining thereto, and all the franchises, rights, and privileges appertaining to the same, now existing, or hereafter to be acquired.

Also all right, title, interest, claim, or demand which said parties of the first part now have, or shall hereafter acquire, in or to all public lands of the United States granted by an act of Congress approved May 15th, 1865, to the State of Iowa, and by the general assembly of said State, by an act approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company, with all the estate, right, title, and interest, property, and possession, claim or demand whatever, at law or in equity, of the said parties of the first part, in and to the same, and each and every part and parcel thereof, excepting, saving, and reserving to the parties of the first part all lands now owned, or hereafter to be acquired by them, which may not be included in the said grant of public

land from the United States, and may not be necessary for the uses & purposes of said railroad, & the depots & right of way thereof: To have and to hold all & singular the lands and premises hereby granted, or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, or the survivor of them, and their successors, appointed or elected in manner hereafter provided, for the uses and purposes, and upon the trusts, terms, and conditions in this indenture set forth and declared.

Provided always, and these presents are upon the express condition, that if the said party of the first part shall well & truly pay, or cause to be paid, to the holders of the said second mortgage construction bonds, and every of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon, at the times and in the manner as hereinbefore provided, according to the true intent and meaning of these presents, that then, and from thenceforth, this indenture and the estate hereby granted shall cease & determine; and all the right, title, & interest in any and all the property hereby conveyed to the parties of the second part, not then disposed of by them under the powers hereby conferred upon them, shall revert to and vest in the party of the first part.

This indenture further witnesseth that these presents and the said series of second mortgage construction bonds or obligations are made, executed, & delivered upon the terms, conditions, & agreements following, that is to say:

First. The said trustees, parties of the second part, or any of them or their successors, may at any time be superseded by any number of all the bondholders of said second mortgage construction bonds who
230 are the owners of a majority in amount of all the said series of bonds secured by this deed of trust, and who shall unite in the designation of such successor or successors; also, that the number of such trustees may in like manner be reduced to two or one trustee, as the holders of a majority in amount of said series of bonds may elect.

Second. That the said Mississippi and Missouri Railroad Company, the party of the first part, and its successors, shall and will pay, or cause to be paid, all taxes, charges, rates, levies, & assessments imposed, assessed, or levied upon the premises, franchises, and property hereby mortgaged, conveyed, and assigned, or intended so to be; and shall and will, at its own proper cost, expense, and charges, do or cause to be done all acts & things necessary or proper to be done or performed, in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid premises, property & franchises hereby created, or intended so to be; & further, that the said Mississippi & Missouri Railroad Company, and its successors, shall not, and will not, at any time hereafter, take, or in any way or manner use, interpose, or avail itself of any extension laws, stop laws, valuation laws, apprais'ment laws, or any other laws of said State of Iowa, now in force, or hereafter to be enacted and in force in said State, and which alter, affect, or impair, or which are designed, intended, or construed to alter, affect, or change, the rights and interests of said parties of the second part as herein declared, or which shall in any way impede or obstruct the mode or manner of realizing, perfecting, or enforcing the rights and interests of any of the holders or owners of said second mortgage construction bonds as herein provided, or which shall affect, change, or alter the time, place, mode, means, or manner of perfecting, enjoying, or enforcing any of such rights or interests, as the same are herein declared.

Third. That the said Mississippi and Missouri Railroad Company, the party of the first part hereto, shall and will well and truly pay the said sums of money in the said second mortgage construction bonds mentioned, together with the semi-annual interest due or to become due thereon, at the rate of seven per cent. per annum, at the times and in the manner and at the places specified therein; and further, said Mississippi and Missouri Railroad Company hereby covenants and agrees that in case it shall, for the space of thirty days, make default in the payment of the semi-annual interest due or to become due upon any or either of said second mortgage construction bonds, then, after the lapse of said thirty days, the whole principal sum mentioned in each and all of said second mortgage construction bonds shall forthwith become due and payable, and the lien or incumberance hereby created, for the security and payment thereof, may be at once enforced, anything in said second mortgage construction bonds, or in this indenture, to the contrary thereof notwithstanding; and that it shall and may be lawful, and the said parties of the second part, and the survivors and survivor of them, and their successors or successor, are hereby expressly authorized and empowered, upon the request in writing of a majority of the amount of the holders of said second mortgage construction bonds, to enter into and upon, and to take actual pos'ession of all & singular the railroad, premises, franchises, rights, property, real and personal, and effects, hereby granted, conveyed, assigned, mortgaged, pledged, transferred, and set over, or intended so to be, as a security for the payment of said second mortgage construction bonds, and by themselves, or their or his agent or agents, take and collect & receive the tolls, earnings, income, and profits thereof, and of every part
231 thereof, or to be derived therefrom; and that they, the said parties of the second part, and the survivor and the survivors of them, and their and his successors and successor, upon the written request as above specified, shall and may proceed, and are hereby expressly authorized and empowered thereupon, but within such reasonable time as they may deem proper—not less than sixty days—and upon and after public notice by advertisement of at least eight weeks, in one or more newspapers published in the cities of Davenport. Des Moines, and Iowa City, in the State of Iowa, and in the city of New York, in the State of New York, to proceed to sell at public auction in said city of Davenport, in the State of Iowa, to the highest bidder, as well all and singular the said railroad, rights, and franchises, as all other the property, real and personal, & premises hereby granted, conveyed, assigned, mortgaged, pledged, transferred, and set over, or intended so to be; and all benefit and equity of redemption whatsoever of the said Mississippi & Missouri Railroad Company, the said party of the first part hereto, of, in, and to the same, and every part and parcel thereof, together with the benefit of the franchise belonging thereto, or connected therewith; subject, however, to the prior liens or incumbrances of the hereinbefore recited several first and second mortgages upon the several divisions of said road, its lands, and other property whatsoever; and, as the attorney or attorneys of the said Mississippi & Missouri Railroad Company, the party of the first part hereto, for that purpose by these presents duly appointed and constituted the said parties of the second part, and the survivors & survivor of them, & their and his successor and successors, shall have full power and authority to make, execute, & deliver to the purchaser or purchasers thereof, good, valid, and sufficient deed or deeds, conveyance or conveyances, assignments or transfers, in fee-simple or otherwise, of said railroad, lands, tenements, and real

estate, and of all and singular the said personal or other property, rights, and premises hereby granted, assigned, transferred, or conveyed as aforesaid; which sale, so to be made as aforesaid, and which deeds, conveyances, assignments, and transfers, so to be made and delivered as aforesaid, shall operate to convey, assign, transfer, and vest in said purchaser all the right, title, interest, & estate whatsoever, reversionary or otherwise, of the said Mississippi and Missouri Railroad Company, the party of the first part, of, in, and to the premises so sold, conveyed, assigned, or transferred; and which said sale, so to be made, shall be a complete and a perpetual bar, both at law & in equity, against the said Mississippi & Missouri Railroad Company, the party of the first part, its successors and assigns, and all persons or parties claiming by, from, or under it or them, in any wise or manner whatsoever; and that out of the moneys or proceeds arising either from said tolls, earnings, or receipts of said railroad and premises, or out of or from said sale so to be made as aforesaid, after first deducting the expenses, disbursem'ts, costs, charges, and counsel fees incurred in and about the conducting said sale, or the running and operating said road, as well all interest due and unpaid upon each and all of the first and second mortgages hereinbefore recited, as they are respectively entitled, under and by virtue of the seperate divisions upon which said several prior deeds of trust have their respective liens; that they the said parties of the second part, and the survivors and survivor of them, their and his successors or successor, shall pay said second mortgage construction bonds, or so many as shall be then outstanding and unpaid, together with all arrears of interest then due or owing upon the same, rendering or paying over the surplus of all such moneys, if any there shall be, to the said party of the first part hereto, its successors or assigns.

232 And it is hereby mutually agreed, & these presents are upon this express condition, that on the payment of the principal and interest of said bonds, the estate hereby granted to the said party of the second part shall be void, and the right of the premises hereby conveyed shall revert to and revert in the said parties of the first part in law and in fact without any acknowledgment of satisfaction, reconveyance, re-entry, or other act. And it is also further mutually agreed, that the said parties of the second part, his or their successor or successors in said trust, and assigns, shall be entitled to receive proper compensation for every labor or service performed by his or their successor or successors in the discharge of their trust, in case they shall be compelled to take pos'session of said premises, or any part thereof, or manage the same.

And it is further mutually agreed that in case of the death, removal, as first above provided, for mental incapacity, or resignation of the said parties of the second part, or either or any of them, all his or their estate, right, interest, power, and control in the premises shall be divested, cease, and determine, and the said parties of the first part shall make appointments of all vacancies in the trustees on the nomination of the holders of the majority of the said second mortgage construction bonds, or, in the default so to do for thirty days, the holders of a majority of the said bonds may apply to the district court of the State of Iowa, sitting in any county of the State, to appoint a new trustee or trustees to supply his or their place, and thereupon such new trustee or trustees shall become vested for the purposes aforesaid with all the rights and interest hereby conveyed to or vested in the said parties of the second part, without any further assurance or conveyance for the same, but if the same shall be necessary, both or either of the parties hereto shall

execute any necessary releases or conveyances for that purpose; like proceedings shall be had to supersede, substitute, or reduce the number of trustees, when required by the holders of the majority of said second mortgage construction bonds.

In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed, and the same to be subscribed by their president and secretary, and the said party of the second part has set his hand and seal the day and year first above written.

L. S. SEAL OF MISSISSIPPI & MISSOURI RAILROAD COMPANY.

JOHN A. DIX, *President.*
H. PRICE, *Secretary.*
THO'S C. DURANT, *Trustee.* [SEAL.]
JACOB S. WETMORE, *Trustee.* [SEAL.]
R. B. MINTURN, JR., *Trustee.* [SEAL.]

STATE OF MARYLAND, *Baltimore City, to wit:*

Be it remembered that, on this 20th day of December, A. D. 1861, before the undersigned, a notary public in & for the city and State aforesaid, personally appeared John A. Dix, to me personally known to be the identical person described in and who executed the foregoing instrument as president of the Mississippi & Missouri Railroad Company—the words in the eleventh line from the bottom line, "a resident in the city of New York" being first erased, and the words "and secretary" in the second line interlined—and acknowledged the execution thereof to be his voluntary act and deed for the uses and purposed therein mentioned.

L. SOULTON, NOTARIAL SEAL, BALTIMORE, MD.

In testimony whereof I have hereunto set my hand and affixed my seal notarial on the day and year above written.

LOUIS SOULTON,
Notary Public.

233 STATE OF NEW YORK, *County of New York, ss:*

Be it remembered that, on the ninth day of January, 1862, before the undersigned, commissioner for the State of Iowa, personally appeared Thomas C. Durant, Jacob S. Wetmore, and R. B. Minturn, jr., to me personally known to be the identical persons whose names are subscribed to the foregoing instrument as trustees—the words in the eleventh line from the bottom line "a resident of the city of New York" being first erased, "and secretary" in the second line interlined—& severally acknowledged the execution thereof to be his voluntary act and deed for the purposes therein mentioned.

I. GARDINER, COMMISSIONER. SEAL.

In testimony whereof I have hereunto affixed my hand and seal the day and year above written.

I. GARDINER,
Commissioner for the State of Iowa.

STATE OF IOWA, *Scott County, ss:*

Be it remembered that, on this 30th day of January, 1862, before the undersigned, John F. Dillon, judge of the seventh judicial district, and for said county and State, personally appeared H. Price, to me personally known to be the identical person whose name is subscribed to the foregoing instrument as secretary, and acknowledged the execution thereof to be his voluntary act and deed for the uses and purposes therein named—the words in the eleventh line from the bottom line "a resident

in the city of New York" being first erased, "and secretary" in the second line interlined before signing.

JOHN F. DILLON,
Judge of the 7th Judicial District of said State, which district includes said Scott County, Iowa.

STATE OF IOWA, *Scott County, ss:*

I, James Thornington, recorder of Scott County, State aforesaid, do hereby certify that the foregoing is a full, true, perfect, and correct transcript of the records in my office in said county of an instrument duly recorded, entitled "Mississippi and Missouri Railroad Company mortgage to Thomas C. Durant and others; filed for record Feb'y 8th, 1862, at 11.45 a. m.—A. F. Mast, recorder, R. Sneetham, deputy—in book "U" of mortgages, on pages 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53."

In testimony whereof I have hereunto set my hand this 15th day of February, 1866.

JAMES THORNINGTON,
Recorder, Scott County, Iowa.

[United States rev. stamp, 5 cents, cancelled.]

(Endorsed:) Filed May 9, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the ninth day of July, A. D. 1866, came the defendant The Mississippi and Missouri Railroad Company, by Cook and Drury, its solicitors, and filed in the said clerk's office its answer; which answer is in the words and figures following, to wit:

234 IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Iowa, ss:

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et al. } In equity.

The seperate answer of the said Mississippi & Missouri Railroad Company to the complainants' bill exhibited in this case, & the amendment thereto.

This defendant, reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in said complainants' bill contained, for answer thereto, or such parts thereof as this defendant is advised is material, says:

This defendant admits its existence as a corporation as set out in said bill, and it admits the grant of land by the United States to the State of Iowa, and by the State of Iowa to this defendant, to aid in the construction ot the main line of its road from Davenport to Council Bluffs, and that this defendant did accept such grant, & by virtue thereof became entitled to and accepted large quantities of land.

And this defendant admits that, on or about the tenth day of December, 1861, it did make, execute, and deliver unto the complainants the indenture of mortgage set out in said bill of complaint for the uses and

purposes mentioned in said mortgage, and particularly to secure certain bonds issued by this defendant to borrow money to aid in constructing its road and to pay indebtedness of said company; and admits that the principal of said bonds is payable on the first day of January, 1882, and that the interest, payable thereon, is at the rate of seven per cent. per annum, payable semi-annually; and this defendant admits that said mortgage is a third lien on the first division of said road, and a second lien on the other two divisions of said road; and this defendant avers that the first and second mortgagees on said first division, and the first mortgagees on said second and third (Oskaloosa) divisions and land grant have superior and paramount liens on said road.

And this defendant admits that a failure to pay said interest at maturity made the whole, principal and interest, due and payable, and that the said plaintiffs, as trustees, may thereupon sell under said mortgage or foreclose the same in the courts of said State of Iowa, provided a majority, in amount, of said bondholders should request in writing that said property be sold.

This defendant admits the recording of said mortgage in various counties, as in said bill alleged.

This defendant admits the issuing of certain bonds as specified & recited in said mortgage, the number and exact amount of which this defendant fully sets out in an exhibit hereto annexed, marked Exhibit "A," and made a part of this answer; in which exhibit this defendant has calculated the amount of unpaid interest up to the 8th day of May, 1866.

This defendant admits that it has failed to pay the interest on said bonds, and avers the truth to be that it has been unable to do so from the earnings of said road.

This defendant admits the demand of said bondholders for their unpaid interest, and that this defendant did not pay the same.

235 This defendant, further answering, says that it is true that it has not applied all the earnings of said road to the payment of interest on bonds issued by this defendant, but avers that it has applied such earnings to the payment of interest, except such an amount as, in the opinions of the officers of said road, was necessary for the payment of current expenses, and such repairs and finishing of said road as were deemed necessary for the profit and interest of said corporation and its creditors.

This defendant admits that it is in arrears for interest on said bonds to an amount shown in said Exhibit "A."

This defendant admits that a failure to pay said interest accumulates the gross amount due, but cannot admit that complainants are imperilled thereby; and defendant admits that said corporation is insolvent.

Further answering the matters set forth in the amendment to the original bill, this respondent admits that said Thomas E. Walker and Franklin Haven, as trustees for certain bondholders, hold a mortgage to secure said bonds, which mortgage bears date as in said bill stated, and was executed by this respondent upon the second division of its road from Iowa City west to Council Bluffs, as stated in said bill, and that there is due on said last-named mortgage about the amount claimed by them, as trustees, and that said mortgage is prior and senior in its lien on said property.

Further answering, this defendant admits that said Edward W. Dunham is the trustee in three several mortgages as set forth in said bill; that they are all prior liens to complainants' lien & extend and cover

the whole road and its property, except the second division from Iowa City to Council Bluffs; and that there is a large amount due on said mortgages.

And this respondent, having fully answered, prays, &c.

{ SEAL OF THE MISSISSIPPI & MO. R. R. CO. } Mississippi & Missouri R. R. Comp'y, by its secretary, as witness his hand & the seal of said corporation, this 30th day of April, A. D. 1866.

EBENEZER COOK,
Secretary of the Miss. & Miss. R. R. Co.

STATE OF IOWA, *Scott County, ss:*

I, Ebenezer Cook, being duly sworn, upon oath say that I am the secretary of the Mississippi and Missouri Railroad Company, the corporation defendant in the above-entitled cause; that I have read the foregoing answer; and that the statements therein made are true, to the best of my knowledge, information, and belief.

EBENEZER COOK.

STATE OF IOWA, *Scott County, ss:*

Sworn to and subscribed before me by the said Ebenezer Cook, in my presence, this first day of May, A. D. 1866.

Witness my hand & notarial seal.

[SEAL.]

J. LEWIS DREW,
Notary Public, Scott Co., Iowa.

"EXHIBIT A."—*Statement of the amount due for principal and interest on the 8th day of May, 1866, on the second mortgage construction bonds of the Mississippi & Missouri Railroad Company.*

Principal			692,000 00
Scrip convertible into said bonds	2,211 85		
Interest on do., from July 1, 1862, @ 6%	511 49		
			2,723 34
236 Past due c'upons of July, 1864, & Jan'y 1865	240 00		
Int. on do., from Jan'y 1, 1865, @ 6%	19 60		
			259 60
Int. on principal due July 1, 1865	24,220 00		
Int. on last am't from July 1, 1865, @ 6 %	1,141 27		
			25,361 27
Int on principal due Jan'y 1, 1866	24,220 00		
Int on last am't from Jan'y 1, 1866, @ 6%	414 67		
			24,634 67
Principal	692,000 00		
Interest	52,978 88		
			$744,978 88

(Endorsed:) Filed May 9, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the ninth day of May, A. D. 1866, came Edward W. Dunham, by John P. Cook, his solicitor, and filed in said clerk's office an answer to complainants' bill and amendment; which answer is in the words and figures following, to wit:

The State and district of Iowa, in the circuit court of the United States.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, et al.

In equity. To May term, 1866.

The seperate answer of the said Edward W. Dunham to the complainants' original bill and the amendment thereto.

This respondent, reserving all benefit and advantage of exception which may be taken to the manny errors and other imperfections in said complainants' bill and amendment contained, for answer thereto, or such part thereof as this respondent is advised it is material for him to answer, saith—

That this respondent admits the creation and existence of the said corporation known as The Mississippi & Missouri Railroad Company as set out in said bill, and he admits the grant of land by the United States to the State of Iowa, and by said State to said railroad company, and the acceptance of said grant by said company.

That this respondent admits the execution of said mortgage, dated the tenth day of December, 1861, from the said railroad company to the complainants, as set out in said bill of complaint, made for the uses and purposes mentioned in said mortgage; that said bonds are payable on the first day of January, 1882, and draw interest at the rate of seven per cent. per annum, payable semi-annually; that said mortgage of complainants is a third lien on the first division of said road, and a second lien on the other two divisions of said road.

And this respondent avers that the mortgages made to him as trustee by the said railroad company, are prior in date and lien upon the first d vision of said railroad, extending from Davenport to Iowa City and Muscatine, and upon the Oskaloosa division of said railroad, extending from Muscatine to Oskaloosa.

237 That this respondent admits that complainants' mortgage is due, and that they have the right to foreclose the same, subject to the rights of this respondent, but this respondent is not advised of the amounts due to the complainants as trustees for the bondholders.

And as to the matters set forth in the amendment to the original bill, this respondent admits and claims that he holds, as trustee, for divers persons owning bonds issued by said railroad company, two several mortgages on the first division of said railroad, extending from Davenport to Iowa City and Muscatine, and on the real estate, rolling-stock, and other property thereto appurtenant, and one other mortgage on the Oskaloosa division of said railroad, extending from Muscatine to Oskaloosa, and on the real estate, rolling-stock, and other property thereto appurtenant; and that said three mortgages are prior liens to that of said complainants and the liens of the other defendants to said bill; and that the said three mortgages to this respondent are now due and subject to foreclosure.

And further answering, this respondent admits the existence of the mortgage to Thomas E. Walker & Franklin Haven, substituted as trustee for Curtis B. Raymond, but the said mortgage does not affect the interest of this respondent, and he is advised that it is not necessary for him to respond further to the allegations in said bill in that behalf.

Wherefore, this respondent having fully answered, he asks that his

rights and interests be protected by this hon. court, and that he be dismissed hence, &c.

EDWARD W. DUNHAM.

JNO. P. COOK, *Solicitor for Respondent.*

(Endorsed:) Filed May 9, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the ninth day of May, A. D. 1866, came the defendants Thomas E. Walker and Franklin Haven, by John P. Cook, their solicitor, and filed in said clerk's office their answer to the bill and amendment; which answer is in the words and figures following, to wit:

The State & district of Iowa, in the circuit court of the United States.

THOMAS C. DURANT ET ALS.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas E. Walker, Franklin Haven, et als.
} In equity. To May term, 1866.

The seperate answer of Thomas E. Walker and Franklin Haven to the complainants' original bill and the amendment thereto.

These respondents, reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in said complainants' bill contained, for answer thereto, or such parts thereof as these respondents are advised is material to answer, say—

These respondents admit the creation and existence of the said corporation known as The Mississippi and Missouri Railroad Company, as set out in said bill, and they admit the grant of land by the United States to the State of Iowa, and by the State of Iowa to the said
238 railroad company, to aid in the construction of the main line of said road from Davenport to Council Bluffs, in Iowa; and that said company accepted the said grant, and by virtue thereof became entitled to and accepted a large quantity of land.

And respondents admit the execution of said mortgage of 10th December, 1861, by said railroad company to complainants, as set out in said bill of complaint, and for the uses and purposes mentioned in said mortgage; that said bonds are payable first January, 1882, and draw interest at the rate of seven per cent. per annum, payable semi-annually; and that said mortgage is a third lien on the first division of said railroad, and a second lien on the other two divisions of said road, and respondents aver that their mortgage is prior in date and lien on the said second division of said railroad.

Respondents admit that complainants' mortgage is due, and that they have the right to foreclose the same, subject to the rights of these respondents; respondents are not advised of the amount due to complainants as trustees for the bondholders.

And as to the matter set forth in the amendment to the original bill, these respondents admit & claim that they hold as trustees for the bondholders a certain mortgage upon the second division of said road, & upon the lands so granted to said railroad company by the acts of Congress and the legislature of Iowa, and that said mortgage is a prior lien to the claim of said complainants and the other defendants to said

bill, and that the mortgage to these respondents is now due and subject to foreclosure.

Further answering, these respondents admit the existence of the three several mortgages to the said defendant Edward W. Dunham, but the said mortgages do not affect the interest of these respondents, and they are advised that it is not necessary for them to respond further to the allegations in said bill in that behalf.

Wherefore, these respondents having fully answered, ask that their rights and interests be protected, and that be dismissed hence, &c.

THOMAS E. WALKER.
FRANKLIN HAVEN.

JOHN P. COOK,
Solicitor for Respondents.

(Endorsed:) Filed May 9, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, on the ninth day of May, A. D. 1866, came the defendant Edward W. Dunham, by John P. Cook, his solicitor, and filed in said clerk's office his cross-bill; which cross-bill is in the words and figures following, to wit:

THE STATE AND DISTRICT COURT OF IOWA, *ss:*

In the circuit court of the United States.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, et al. } In chancery.

The cross-bill of Edward W. Dunham, one of the defendants to the bill of complaint exhibited in the above-entitled cause.

239 To the honorable the judges of the circuit court of the United States within and for the district of Iowa, sitting in equity:

Edward W. Dunham, of Jersey City, and a citizen of the State of New Jersey, brings this his cross-bill against The Mississippi and Missouri Railroad Company, a company duly organized under and by virtue of the laws of the State of Iowa; Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, citizens of the State of New York, and the complainants in the bill of complaint to which this bill is a cross-bill; Mark Howard, of Hartford, a citizen of the State of Conne'ticut; and John Webber, of Philadelphia, and a citizen of the State of Pennsylvania.

And thereupon your orator Edward W. Dunham, complains and says—

That heretofore, to wit, on or about the fifth day of February, A. D. 1866, the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, filed in the honorable court their certain bill of complaint against the said Mississippi and Missouri Railroad Company and others, as defendants, praying the foreclosure of a certain mortgage executed to the said complainants by the said railroad company, and setting forth that your orator in this cross-bill, as trustee for divers owners of bonds issued by the said railroad company, three certain mortgages

or deeds of trust upon parts or divisions of the railroad of the said company.

And thereafter, to wit, on the 27th day of April, A. D. 1866, the said complainants filed in this honorable court an amendment, to their said bill, wherein and whereby they made your orator also a party defendant to their said bill of complaint, and prayed as before in their original bill for the foreclosure of their said mortgage.

And your orator, complaining, shows that the said Mississippi and Missouri Railroad Company is a corporation organized under chapter 43 of the Code of Iowa, enacted February 5th, A. D. 1851, for the purpose of building, maintaining and operating a railroad from the eastern line of said State of Iowa, at or near Davenport, in the county of Scott, to the western line of said State, at or near Council Bluffs, in the county of Pottawattamie, with power to construct, maintain, and use a branch railroad from the main line of said road, southwesterly, by the way of Muscatine to the southern or western bound'ry of said State, or both, and with full power to borrow money for the purpose of building, maintaining, and operating such railroads, and to execute mortgages on such roads and the other property and franchises of said company to secure the payment of the money borrowed.

And your orator further shows that the said railroad company has accordingly constructed a railroad extending from the eastern bound'ry of the State of Iowa, at Davenport aforesaid, westwardly to Kellogg, in the county of Jasper, in said State, a distance of one hundred and thirty-five miles, or thereabouts, and also a branch of the said railroad, connecting with said main line at Wilton, in the county of Muscatine, & thence extending southwestwardly, by way of the city of Muscatine, to Washington, in the county of Washington in said State, a distance of fifty-three miles, or thereabouts; and that the said company is now in the pos'session of and operating said railroad, and in pos'session and use of the depot grounds, stations, and buildings thereto appurtenant, and is also the owner and in pos'session and use of a large number of locomotive engines, tenders, freight cars, passenger cars, and other rolling-stock, as well as of machine shops, steam-engines, machinery, tools,
240 and a large quantity of materials, such as iron, wood, paints, &c., procured for the purpose of operating said road and repairing the road-bed and rolling-stock thereof.

And your orator shows that the said railroads were built in three divisions, known and described as follows, to wit:

The first division, commencing at the eastern bound'ry of the said State of Iowa, at Davenport, and thence extending westwardly to Iowa City, in Johnson County, and also including the branch railroad commencing at the main line at Wilton, in Muscatine County, and thence extending southwardly to the city of Muscatine aforesaid.

The second division, commencing at Iowa City aforesaid, and thence extending westwardly to the termination of said road.

The third or Oskaloosa division, commencing at the city of Muscatine aforesaid, and thence extending southwestwardly to Washington, in Washington County aforesaid.

And your orator further shows unto your honors that, on the first day of July, A. D. 1855, the said Mississippi and Missouri Railroad Company did make, execute, and deliver unto your orator as trustee a certain indenture of mortgage under the corporate seal of said company, and signed in behalf of said company by its president and treasurer thereto duly authorized, and dated on the day last aforesaid, in and by which mortgage it was recited that the said Mississippi & Missouri

Railroad Company was then engaged in constructing the division of its railroad extending from Davenport to Iowa City and Muscatine, a distance of sixty-seven miles, and for that purpose was desirous of raising money by the issue of bonds to the amount of one million of dollars, to be applied to the construction and completion of the said railroad from the city of Davenport to the cities of Iowa and Muscatine and putting the same into operation; and in order to secure the payment of the money borrowed did propose to execute bonds for the sum of one thousand dollars each, bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first day of July and January in each year, and the principal reimbursable on the first day of July, 1875, with the option on the part of the owner of the bond of converting the same into the stock of the company at any time previous to the first day of July, 1860; such bonds to be on an equality so far as regards security for the payment thereof by said indenture, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate, signed by your orator, the said trustee, and said bond and certificate to be in a form fully set forth in the said indenture of mortgage.

For a full and complete recital, as well as for the form of said bond and certificates, your orator refers to a true copy of said indenture of mortgage, which he attaches to this his cross-bill, and prays that said copy may be made a part hereof. Said copy is marked "Exhibit A."

And thereupon the said Mississippi and Missouri Railroad Company, in and by the said indenture of mortgage so dated on the first day of July, A. D. 1855, as aforesaid, in order to secure the payment of said bonds & interest, and in consideration of the sum of one dollar, to the said company in hand paid by your orator at the ensealing and delivery of said indenture, did grant, bargain, sell, transfer and convey to your orator and his successors in trust the said railroad, then constructed or to be constructed, together with all & singular the railways, land procured or occupied for right of way, together with bridges, fences, privileges, rights, and real estate owned by said company, or thereafter to be owned by them, between the city of Davenport and the cities of
241 Iowa and Muscatine, and all the tolls, income, issues, & profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which should be procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, and machinery procured for or connected with the division of sixty-seven miles of road before described, and in any way belonging or appertaining to the said sixty-seven miles of road then constructed or to be constructed, including all the property of the company on said division, real & personal, and all the rights, credits, & franchises of the company in said division of railroad:

To have and to hold the said premises, and every part thereof, with the appurtenances, unto your orator and his successor as trustee, in trust for the person or persons, bodies politic or corporate, who should become holders of the said bonds, or any of them, about to be issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds and provisions of the charter of said company & the amendments thereto, under which said company derives its powers, and subject to the pos'session, control, and management of the directors of said company so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of said indenture of mortgage.

And your orator further shows that in and by the said indenture it is covenanted and provided that in case the said Mississippi and Missouri Railroad Company should fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds at any time when the same might become due and payable according to the tenor thereof when demanded, then, after sixty days from such default, upon the request of the holder of any such bond, your orator and his successors in said trust might and should take actual pos'session of said railroad, and of all and singular the property and effects mortgaged, and through the agency of the persons he or they might from time to time appoint should receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under said mortgage, first defraying out of the same the expenses of the road and its needful repairs; or your orator and his successors in trust might, at his or their discretion, or on the written request of the holders of at least one-half of the bonds then unpaid should, cause the said premises, or so much thereof as shall be neeessary to pay and discharge the principal and interest of all such of said bonds as might then be unpaid as aforesaid, to be sold at public auction, as particularly specified and stipulated in said indenture, and apply the proceeds of such sale, after deducting the cost and expenses thereof, and of managing such property, to the payment of said principal and interest, or so much as may be neeessary therefor.

But upon this condition that, on payment of the principal & interest of said bonds, the estate in said indenture granted to your orator should be void. All of which, by ref'rence to said indenture of mortgage, to which your orator for greater certainty craves leaves to refer, and a true copy of which is hereto attached as "Exhibit A" as aforesaid, will fully and at large appear.

And your orator further shows that he accepted the trust so conferred in said indenture; that the said indenture of mortgage was duly acknowledged, and that the same was duly recorded in all the counties through which the said division of said railroad runs, and in which the property thereby mortgaged is situated, to wit, the counties of Scott, Cedar, Johnson, and Muscatine.

And your orator further shows and alleges that said railroad
242 company, in pursuance of its desire and intention to borrow money as recited in said indenture of mortgage, and for the purpose therein set forth, did execute and deliver under its corporate seal and the signature of its president and treasurer a large amount of said bonds or obligations now outstanding and unpaid, to wit, an amount in the aggregate of one million of dollars in bonds of one thousand dollars each, dated the said first day of July, 1855, known as "first mortgage bonds," secured on the first division of said company's railroad and its appurtenances, by which said bonds the said company bound itself, and agreed to pay to holders or bearers of said bonds the sums therein expressed respectively, on the first day of July, 1875, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each and every year, until the maturity of said bonds.

The said bonds to the amount aforesaid are now held and owned by divers persons who have purchased the same for value, and are valid and subsisting obligations against the said company to the full amounts therein expressed, with the interest accrued and unpaid thereon.

And your orator further shows and alleges that the conditions of the said indenture of mortgage have been broken, and that the said railroad

company is in default; that is to say, the said Mississippi and Missouri Railroad Company has refused, neglected, and failed to pay, or cause to be paid, to the holders of said bonds, or any of them, the semi-annual interest due and payable thereon according to the tenor of said bonds at the times specified therein, although thereto requested and demanded by the holders of said bonds, or a large number of them, according to the provisions of the said indenture of mortgage.

And your orator shows that there is now due and unpaid a large amount of interest upon said bonds, to wit, the semi-annual interest on the whole of said bonds which, by the terms thereof, should have been paid on the first day of July, 1865; also the semi-annual interest on the whole of said bonds which, by the terms thereof, should have been paid on the first day of January, 1866; also a large amount of interest which became due and payable before the two days last aforesaid, of the exact amount of which your orator is not now advised, further than that he charges and shows that certain interest on said bonds which became due on and prior to the first day of January, A. D. 1864, and amounting to the sum of two hundred and fourteen thousand dollars, remained and remains unpaid; and that for the c'upons representing such unpaid interest, the holders thereof did conditionally agree under an arrangement with said company, that they would take certain bonds, known as "income bonds," only on condition that the interest accruing thereon should be promptly paid, & also the principal when the same should become due; and to insure said payment, and not loose nor release their lien on said road under said mortgage, the said holders of said unpaid interest c'upons upon said bonds did conditionally deposit said unpaid interest c'upons amounting to $214,000, or thereabouts, as aforesaid, with a trustee, reserving and retaining the right, in case said income bonds and the interest thereon at seven per cent. per annum were not promptly paid by said company, to at any time surrender said income bonds to the said trustee holding said c'upons in trust as aforesaid, & to receive again their unpaid interest c'upons as aforesaid, and that the said company has failed to pay the semi-annual interest on said income bonds due on the first day of July, 1865, and since that date, and that the owners of said unpaid interest c'upons and holders of said income bonds elect to return said bonds, and receive their c'upons
243 from said trustee, and now ask that said unpaid c'upons, and all of them, together with interest thereon, since the first January, 1865, be received and merged in the decree of this court as hereinafter prayed, together with all other unpaid interest, and interest thereon.

And your orator further says that there are other sums due sundry holders of said bonds for unpaid interest, of the exact amount of which your orator is not now advised.

Wherefore, and in pursuance of the provisions of the said mortgage and the laws of the State of Iowa, your orator, as trustee for the holders of said bonds as aforesaid, now claims in behalf of said bondholders that the whole of the principal sum mentioned in each and all of said bonds, and secured by said indenture of mortgage, has become and is due and payable with interest thereon at seven per cent. to date, and that your orator is now entitled to a foreclosure of the said mortgage in behalf of said bondholders for the whole principal sum and unpaid interest thereon so secured by said mortgage as aforesaid.

And your orator has been requested and directed by the holders of more than one-half in amount of said bonds to proceed to enforce and foreclose said mortgage in this action.

And your orator further complains and says that, heretofore, to wit,

on the first day of July, 1856, the said Mississippi and Missouri Railroad Company did make, execute, and deliver unto your orator, as trustee, a certain other indenture of mortgage under the corporate seal of said company, and signed on behalf of said company by its president and treasurer, thereto duly authorized, and dated the day last aforesaid, in and by which indenture it was recited that the said Mississippi and Missouri Railroad Company had then constructed and finished the division of said road extending from Davenport to Iowa City and the city of Muscatine, a distance of sixty-seven miles, and for the purpose of raising money to pay off the contractors, and to purchase additional equipments for said division of said road, was desirous of raising money by the issue of a series of second mortgage bonds to the amount of four hundred thousand dollars to be applied to that purpose, and in order to secure the payment of the money borrowed did propose to execute bonds for the sum of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually on the first days of January and July in each year, and the principal reimbursable on the first day of July, 1876, each bond to be on an equality so far as regards security for the payment thereof by said indenture, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate signed by your orator, the bond and certificate to be in a form fully set forth in said indenture of mortgage.

For a full and complete recital, and for the form of said bonds and certificate, your orator craves leave to refer to a true copy of said indenture of mortgage which he attaches to this his cross-bill, and prays that said copy may be taken as a part hereof.

And thereupon the said Mississippi and Missouri Railroad Company in and by the said indenture of mortgage so dated, on the first day of July, 1856, as aforesaid, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to the said company at the sealing and delivery of said indenture, in hand paid by your orator, did grant, bargain, sell, transfer, and convey to your orator, and his successors, in trust, the said railroad, then constructed, and to be constructed, together with all and singular the railways, land
244 used and occupied for right of way, together with bridges, fences, privileges, and rights owned by said company, or which should thereafter be owned by it between the city of Davenport and the cities of Iowa City and Muscatine, in the State of Iowa, and all the tolls, income, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which should be procured therefor, together with all the locomotive engines and tenders, passenger cars, and freight cars, shops, tools, and machinery, procured for or connected with the division of road then constructed, and to be constructed, including all the property, rights, credits, and franchises of the company in said division of railroad, subject to a previous mortgage of one million of dollars made between the same parties on the first day of July, 1855, being the same mortgage in this cross-bill before set out and described, and a copy of which is hereto annexed as Exhibit "A:"

To have and to hold the said premises and every part thereof, with the appurtenances, unto your orator, his successors in said office, as trustee in trust for the person or persons, bodies politic or corporate, who should become holders of the said bonds, or any of them, then to be issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds, and the provisions of the charter of said company, and the amendments thereto, under which said company de-

rives its power, and subject to the pos'session, control, & management of the directors of said company so long as said company should well & truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of said indenture of mortgage.

And your orator further shows, that in and by said indenture, it is covenanted and provided that in case the said Mississippi and Missouri Railroad Company should fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds at any time when the same might become due and payable according to the tenor thereof, when demanded, then, after sixty days from such default, upon the request of the owner of any such bond, your orator might and should take actual pos'session of said railroad, and of all and singular the property and effects mortgaged, and through the agency of persons by him from time to time appointed should receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under said mortgage, first defraying out of the same the expenses of the road and its needful repairs, to your orators and his successors, at his or their discretion, might, or on the written request of the holders of at least one-half of the bonds then unpaid should, cause the said premises, or so much thereof as should be necessary to pay and discharge the principal and interest of all such of said bonds as might be unpaid as aforesaid, to be sold at public auction in manner as particularly specified and stipulated in said indenture; and should, after deducting the costs and expenses of such sale, apply so much of the proceeds thereof as might be necessary to the payment of said principal and interest on said bonds, and restore the residue to said company.

But upon condition that, on payment of the principal and interest of said bonds, the estate in said indenture granted to your orator, should be void.

All of which, by reference to said indenture of mortgage, to which your orator for greater certainty craves leave to refer, and a true copy whereof is hereto attached as aforesaid, marked "Exhibit B," will more fully and at large appear.

And your orator further shows that he accepted the trust con-
245 ferred in said indenture as aforesaid; that the said indenture of mortgage was duly acknowledged, and that the same was duly recorded in all the counties of said State of Iowa, through which the said division of said railroad runs, and in which the property thereby mortgaged is situated, to wit, the counties of Scott, Cedar, Johnson, and Muscatine.

And your orator further shows and alleges that the said railroad company, in pursuance of its desire and intention to borrow money as recited in said indenture of mortgage, and for the purpose therein set forth, did execute and issue, under its corporate seal and the signature of its president and treasurer, a large amount of such bonds or obligations, now outstanding and unpaid, to wit, an amount, in the aggregate, of four hundred thousand dollars, in bonds of one thousand dollars each, dated the said first day of July, 1856, known as "second-mortgage sinking-fund bonds," secured on the first division of said company's railroad and its appurtenances, by which said bonds the said company bound itself and agreed to pay to bearer or holders of said bonds the sums of money therein expressed, respectively, on the first day of July, 1876, and also interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first day of each January and July ensuing the date thereof, until the said principal sum should be paid.

And the said bonds, to the amount aforesaid, are now held & owned

by divers persons who have purchased the same for value, and are valid & subsisting obligations against the company for the full amounts therein expressed, with the interest accrued and unpaid thereon.

And your orator further shows and alleges that the conditions of the said indenture of mortgage have been broken, and that the said railroad company is in default, that is to say, the said Mississippi and Missouri Railroad Company has failed, neglected, and refused to pay or caused to be paid to the holders of said bonds, or to any of them, the semi-annual interest due and payable thereon, according to the tenor of said bonds, at the times specified therein, although thereto requested and demanded by the holders of said bonds, or a large number of them, according to the provisions of the said indenture of mortgage.

And your orator shows that there is now due and unpaid a large amount of interest upon said bonds, to wit:

The semi-annual interest on the whole of said bonds, which, by the terms thereof, should have been paid on the first day of July, A. D. 1865; also, the semi-annual interest on the whole of said bonds, which, by the terms thereof, should have been paid on the first day of January, A. D. 1866.

Also, further sums due to holders of said bonds, or some of them, for interest accrued before said two last-mentioned days, of the exact amount of which your orator is not now advised.

Wherefore, and in pursuance of the provisions of the said indenture of mortgage, and the land of the State of Iowa, your orator, as trustee for the holders of said bonds, as aforesaid, now claims on behalf of said bondholders, that the whole of the principal sum mentioned in each and all of said bonds, and secured by said indenture of mortgage, has become and is due and payable, with interest thereon, at eight per cent. per annum to date, and that your orator is now entitled to a foreclosure of the said mortgage in behalf of said bondholders for the whole principal sum and unpaid interest thereon, as secured by said mortgage as aforesaid.

And your orator has been requested and directed by the holders
246 of more than one-half in amount of said bonds to proceed to enforce and foreclose said mortgage in this action.

And your orator further complains and says: That, on the first day of July, A. D. 1856, the said Mississippi and Missouri Railroad Company did make, execute, and deliver unto your orator, as trustee, a certain other indenture of mortgage under the corporate seal of the said company, and signed in behalf of said company by its president and treasurer thereof, duly authorized; in and by which said indenture it was recited that the said Mississippi and Missouri Railroad Company was then engaged in constructing the division of said road extending from the city of Muscatine to Oskaloosa, a distance of ninety-five miles, and for that purpose was desirous of raising money by the issue of bonds to the amount of one million four hundred and twenty-five thousand dollars, to be applied to the construction and completion of the said railroad from the city of Muscatine to Oskaloosa, and putting the same into operation, and in order to secure the payment of the money borrowed did propose to execute bonds for the sum of one thousand dollars, each bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first day of July and January in each year, and the principal reimbursable on the first day of July, 1876; with the option on the part of the owner of the bond of converting the same into the stock of the company at any time previous to the first day of July, 1861; such bonds to be on an equality so far as regards security for the

payment thereof by said indenture, notwithstanding the same might be issued at different times; each of said bonds being authenticated by a certificate signed by your orator, the said trustee, and said bond and certificate to be in a form fully set forth in the said indenture of mortgage.

For a full and complete , as well as for the form of said bonds and certificate your orator craves leave to refer to a true copy of said indenture of mortgage, which he attaches to this his cross-bill, and prays that copy may be made a part hereof. Said copy is marked "Exhibit C."

And thereupon the said Mississippi and Missouri Railroad Company, in and by the said indenture of mortgage so dated on the first day of July, 1856, as aforesaid, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to said company at the sealing and delivery of said indenture in hand paid by your orator, did grant, bargain, sell, transfer and convey to your orator and his successors in the trust thereby created the said railroad, constructed and to be constructed, together with all and singular the railways, land used and occupied for right of way, together with bridges, privileges, & rights owned by said company, or which should be thereafter owned by it, between the city of Muscatine and the city of Oskaloosa, and all the tolls, income, issues, and profits to be had from the same, and all the lands used and occupied for depots and stations, with all buildings standing thereon, or which should be procurred therefor, together with all the locomotive engines and tenders, passenger cars & freight cars, shops, tools, and machinery procured for and connected with the division of ninety-five miles of road constructed and to be constructed, including all the property, rights, credits, and franchises of the company in said division of railroad:

To have and to hold the said premises and every part thereof, with the appurtenances, unto your orator, his successor in said office of trustee, in trust for the person or persons, bodies politic or corporate, who should become holders of the said bonds, or any of them, about
247 to be issued by the said company as aforesaid, subject to all the terms and stipulations of the said bonds and the provisions of the charter of said company, and the amendments thereto under which said company derives its powers, and subject to the pos'session, control, and management of the directors of said company, so long as said company should well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of said indenture of mortgage.

And your orator further shows that in and by the said indenture it is covenanted and provided that in case the said Mississippi and Missouri Railroad Company should fail to pay the principal, or any part thereof, or any of the interest, or any of the said bonds, at any time when the same might become due and payable according to the tenor thereof when demanded, then, after sixty days from such default, upon the request of the holder of any such bond, your orator and his successors in said trust might and should take actual pos'session of said railroad and of all and singular the property and effects mortgaged, and, through the agency of the persons he or they might from time to time appoint, should receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under said mortgage, first defraying out of the same the expenses of the road and its needful repairs; or the said trustee, your orator, and his successors in said trust, at his or their discretion, or on the written request of the holders of at least one-half of the bonds then unpaid, should cause the

said premises, or so much thereof as should be necessary to pay and discharge the principal and interest of all such of said bonds as might then be unpaid as aforesaid, to be sold at public auction, as particularly stipulated and specified in said indenture, and after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as might be necessary to the payment of said principal and interest on said bonds, and should restore the residue thereof to said company, but upon the condition that on payment on the principal and interest of said bonds the *estate* in said indenture granted to your orator should be void.

All of which, by reference to said indenture of mortgage, to which your orator for greater certainty craves leave to refer, and a true copy of which is hereto attached as "Exhibit C," as aforesaid, will fully and at large appear.

And your orator further shows that he accepted the trust so conferred in said indenture; that the said indenture of mortgage was duly acknowledged; and that the same was duly recorded in all the counties in said State of Iowa, through which the said division of said railroad runs and in which the property mortgaged is situated.

And your orator further shows and alleges that the said railroad company, in pursuance of its desire and intention to borrow money as recited in said indenture of mortgage, and for the purposes therein set forth, did execute and issue under its corporate seal and the signatures of its president and treasurer a large amount of such bonds, or obligations, which are now outstanding and unpaid, to wit, an amount in the aggregate of five hundred and ninety thousand *thousand* dollars in bonds of one thousand dollars each, dated the said first day of July, 1856, known as Oskaloosa division bonds, secured on the said Oskaloosa division of said company's railroad and its appurtenances, by which said bonds the said company bound itself and agreed to pay to holders or bearers of said bonds the sums therein expressed respectively on the first day of July, 1876, and also interest thereon at the rate of
248 seven per cent. per annum, semi-annually, on the first day of each January and July ensuing the date thereof, until the said principal sum should be paid.

The said bonds to the amount aforesaid are now held and owned by divers persons who have purchased the same for value, and are valid & subsisting obligations against the said company to the full amounts therein expressed, with the interest accrued and unpaid thereon.

The said company proceeded with the construction of the said Oskaloosa division of its said railroad, but that it has as yet completed and is now operating the said division only so far as Washington, in the county of Washington, in said State of Iowa.

And your orator further shows and alleges that the conditions of the said indenture of mortgage have been broken, and that the said railroad company is in default, that is to say, the said Mississippi and Missouri Railroad Company has refused, neglected, and failed to pay or cause to be paid to the holders of said bonds, or to any of them, the semi-annual interest due thereon, according to the tenor thereof at the times specified therein, although thereto requested and demanded by the holders of said bonds, or a large number of them, according to the provisions of the said indenture of mortgage.

And your orator shows that there is now due and unpaid a large amount of interest upon said bonds, to wit:

The semi-annual interest on the whole of said bonds which, by the terms thereof, should have been paid on the first day of July, 1865.

Also the semi-annual interest on the whole of said bonds which, by the terms thereof, should have been paid on the first day of January, 1866.

Also a large amount of interest which became due and payable before the two days last aforesaid, of the exact amount of which your orator is not at present fully advised, further than that, as he charges and shows, certain interest on said bonds, which became due on and prior to the first day of , 186 , and amounting to the sum of seventy-six thousand dollars, or thereabouts, remained, and remains, unpaid; and that for the c'upons representing such unpaid interest, the holders thereof did conditionally agree, under an arrangement with said company, that they would take certain bonds known as "income bonds," or scrip convertible into such income bonds, only on condition that the interest accruing on such bonds and scrip should be promptly paid, and also the principal when it became due; and to insure such payment, and not loose nor relinquish their lien on said road under said mortgage, the said holders of said unpaid interest c'upons upon said bonds did conditionally deposit said interest c'upons unpaid amounting to seventy-six thousand dollars, or thereabouts, as aforesaid with a trustee, reserving and retaining the right, in case said income bonds and scrip & the interest thereon at seven per cent. per annum were not promptly paid by said company, to at any time surrender said income bonds or scrip to the said trustee holding their said unpaid c'upons in trust as aforesaid, and to receive again their said unpaid c'upons as aforesaid; and that the said company has failed to pay the semi-annual interest on said income bonds due on the first day of July, 1865, and since that date, and the interest on said scrip since the first day of July, 1863, and that the owners of said unpaid interest c'upons and holders of such income bonds and convertible scrip elect to return said bonds and scrip and receive their c'upons from said trustee, and now ask that said unpaid interest c'upons, and all of them, together with interest thereon, be reckoned and merged
249 in the decree of this hon. court as hereinafter prayed, together with all other unpaid interest, and interest thereon.

And your orator further says that there are other sums due sundry holders of said funds for unpaid interest thereon, of the exact amount of which your orator is not now advised.

Wherefore, in pursuance of the provisions of the said mortgage and the land of the said State of Iowa, your orator, as trustee for the holders of said bonds as aforesaid, now claims, on behalf of said bondholders, that the whole of the principal sums mentioned in each and all of said bonds, and secured by said indenture of mortgage, has become and is due and payable, with interest thereon at seven per cent. to date, and that your orator is now entitled to a foreclosure of the said mortgage in behalf of said bondholders for the whole principal sum and unpaid interest thereon so secured by said mortgage as aforesaid.

And your orator has been requested and directed by the holders of more than one-half in amount of said bonds to proceed to enforce and foreclose said mortgage in this action.

And your orator further shows unto your honors that the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., the complainants in the original bill of complaint in this cause, are, as your orator is informed and believes, trustees for divers persons holding certain other bonds issued by the said Mississippi and Missouri Railroad Company, on or about the tenth day of December, 1861, which bonds are secured, or intended to be secured, by a certain other indenture of mortgage executed and delivered to said three complainants as trustees

by the said railroad company, and also dated on the said 10th day of December, 1861, and conveying, or intending to convey, the entire railroad of said company, including the divisions mortgaged to your orator by three several mortgages as hereinbefore fully set forth; but your orator charges that the lien of said mortgage, and the rights of the said trustees and bondholders thereunder, are subject and junior to the liens created by all and each of the three mortgages to your orator as aforesaid, and inferior to the rights of your orator and the holders of the bonds secured by the said three mortgages severally executed by the said railroad company to your orator as aforesaid.

And that the said defendants Mark Howard and John Webber have, or claim to have, or are supposed to have, some lien or claim upon the railroad and other property mortgaged to your orator as aforesaid, by reason of certain judgments by them recovered against the said Mississippi and Missouri Railroad Company, or otherwise; but your orator charges that all such claims or liens are subject and inferior to the liens created by all and every of your orator's said mortgages.

And your orator further complains and says that, as your orator is informed and charges the truth to be, the said Mississippi & Missouri Railroad is now, and has always been since the construction of said divisions of said road, in actual pos'ession thereof, and using and operating the same and recieving the earnings, income, and profits of said divisions, and should, by its promises and undertakings in said bonds and in said mortgages to your orator, have applied such earnings, after the payment of necessary expenses, to the payment of the interest upon said bonds; but the said railroad company has utterly failed and refused to apply its net earnings in payment of said interest, and has used and applied the net earnings of said divisions to other purposes and for other objects, in violation of its covenants and agreements so contained in said bonds and mortgages; and that the unpaid interest is constantly accumulating and increasing to the amount of the indebtedness so secured by said mortgages, while the property mortgaged is decreasing in value, thereby endangering the rights and security of the holders of said bonds, and your orator charges that the said Mississippi and Missouri Railroad Company is insolvent, and unable to pay its just debts and liabilities.

All which actings, doings, pretenses, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator and his cestui's que trust in the premises.

In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable—

To the end, therefore, that the said parties defendant to this cross-bill may show cause, if any they have, why your orator should not have the relief herein prayed, and that the said Mississippi and Missouri Railroad Company and the officers of said company, and the other defendants to this cross bill, may, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, & perfect answers make to all and singular the matters and things aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them particularly and distinctly interrogated thereto:

And more especially that the said railroad company may, in manner aforesaid, answer and set forth from its books and records, and from such other source or sources of information as the said railroad company and its officers may have or be able to obtain, full, true, and per-

fect accounts of the amount of bonds by said company issued and secured by your orator's said three mortgages and each one of them respectively, and seperate, full, true, perfect, and particular accounts of the amount of interest due and unpaid on each of your orator's said three mortgages respectively; and further, what disposition, if any, was made of any unpaid c'upons representing interest on any of said bonds, and the present condition of such unpaid interest c'upons; and further, that said railroad company state fully and particularly how much and what rolling-stock and other equipments, material, and property belong to the said first division of their said road and to the said Oskaloosa division thereof, respectively:

And that accounts may be taken, by and under the direction of this hon. court, of the amounts due upon the said bonds so secured by said three several mortgages to your orator as aforesaid, both for principal and unpaid interest thereon, an account being taken for the amount due on each of said mortgages seperately; and that the said Mississippi and Missouri Railroad Company be decreed to pay the holders of said bonds respectively the sums which by such accounts shall appear to be due thereon at the time of taking such acc'unt, with interest and costs of suit on each mortgage respectively:

And also in default of such payment of the sums so found due upon the said two mortgages to your orator, conveying to your orator the said first division of the said railroad company's railroad as first herein set forth, the property conveyed and mortgaged in said two first-mentioned mortgages to your orator as aforesaid, to wit, the said railroad constructed and to be constructed, together with all and singular the railways, land procured or occupied for right of way, together with bridges, fences, privile*d*ges, rights, & real estate owned by said company between the city of Davenport and the cities of Iowa City and Muscatine, and all the tolls, income, issues, and profits to be had from the same, and all the lands used or occupied for depots or stations, with all buildings standing thereon or procured therefor, together with
251 all the locomotive engines and tenders, passenger cars, and freight car', shops, tools, & machinery, procured for or connected with the division of sixty-seven miles of road before described, and in any way belonging or appertaining to the said sixty-seven miles of road, including all the property of said company on said division, real & personal, and all the rights, credits, and franchises of the company in said division of railroad, and all and every other property, estate, claim, rights, demand, equities, and interest of every description whatsoever covered and conveyed in any manner whatsoever by said mortgages, and each of them, be sold by and under the direction of this hon. court by the marshal*l* of the said district of Iowa, or by some master or other proper officer to be appointed therefor by this hon. court, at public auction, to the highest bidder or bidders, for cash or its equivalent, in pursuance of law; and that upon such sale the said marshal*l* or master, or other officer by whom such sale shall have been made, execute and deliver all proper conveyances, deeds, rec*i*epts, and other instruments to the purchaser or purchasers at such sale, which shall vest in him or them the absolute title to all and singular the property so sold; and that the said purchaser or purchasers be thereupon put in full and actual pos'session of all and singular the property sold to them as aforesaid; and that upon such sale the said parties defendant to this cross-bill, and all and every of them, and all and every person or persons claiming or to claim by, through, or under them, or any of them, be absolutely and forever barred and foreclosed of and from all and every

right, interest, claim, title, demand, estate, and equity of redemption in and to the said property, and every part thereof:

And that the money arising from such sale be brought into court, and that there be paid thereout, first, the necessary expenses of your orator in his trust, including the costs and charges of this suit, and the outlay of your orator for counsel and solicitors; second, the amount found due to holders of the bonds secured by said first-recited mortgage to your orator for the principal and interest of their said bonds or obligations, respectively; third, the amount found due to holders of the bonds secured by said second-recited mortgage to your orator for the principal & interest of their said bonds or obligations respectively:

And that in default of such payment of the sums so found due upon the said third mortgage to your orator conveying to your orator the said Oskaloosa division of the said company's railroad as hereinbefore set forth, the property conveyed and mortgaged in said third-mentioned mortgage to your orator as aforesaid, to wit, the said railroad constructed and to be constructed, together with all and singular the railways, land used and occupied for right of way, together with bridges, fences, privileges, and rights owned by said company, between the city of Muscatine and the city of Oskaloosa, and all the tolls, income, issues, and profits to be had from the same, and all the lands procured, used, and occupied for depots or stations, with all buildings standing thereon or procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, and machinery, procured for or connected with the division of ninety-five miles of road before described, and in any way belonging or appertaining to the said ninety-five miles of road, including all the property, rights, credits, and franchises of said company in said division of railroad, and all and every other property, estate, claim, rights, demand, equities, and interest of every description whatsoever, covered and conveyed in any manner whatsoever by said mortgage,
252 be sold, by and under the direction and order of this honorable court, by the marshall of the said district of Iowa, or by some master or other proper officer to be appointed therefor by this hon. court, at public auction, to the highest bidder or bidders, for cash or its equivelant, in pursuance of law; and that upon such sale the said marshall or master, or other officer by whom such sale have been made, execute and deliver all proper and necessary conveyances, deeds, reciepts, and other instruments to the purchaser or purchasers at such sale, which shall vest in him or them the absolute title to all and singular the property so sold; and that the said purchaser or purchasers be thereupon put in full and actual pos'session of all and singular the property sold to him or them as aforesaid; and that upon such the said parties defendant to this cross-bill, and all and every of them, and all and every person or persons claiming, or to claim, by, through, or under them, or any of them, be absolutely and forever barred and foreclosed of and from all and every right, interest, claim, tittle, demand, estate, & equity of redemption in and to the said property, and every part thereof:

And that the money arising from such sale be brought into court, and that there be paid thereout, first, the necessary expenses of your orator in his trust, including the costs and charges of this forecloseure and the outlay of your orator for counsel and solicitors; and, second, the amount found due to holders of the bonds, secured by said third-recited mortgage to your orator as aforesaid, for the principal and interest of their said bonds or obligations respectively:

And that your orator may have such other and further relief in the

premises as the nature of the circumstances of this case may require and to your honors shall seem meet and agreeable to equity and good conscience:

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the parties made defendants by this your orator's cross-bill, thereby commanding them, and every of them, at a certain day and under a certain penalty therein to be inserted, personally to be and appear before your honors in this hon. court, and then and there to answer all and singular the premises, and to stand to perform, and abide such order and decree therein as your honors shall seem meet.

And, as in duty bound, your orator will ever pray, etc.

EDWARD W. DUNHAM.

JNO. P. COOK,
Solicitor for Plaintiff in Cross-bill.

"Exhibit A."

This indenture, made the first day of July, in the year one thousand eight hundred and fifty-five, between The Mississippi and Missouri Railroad Company of the first part, and Edward W. Dunham, of the city of New York, of the second part, witnesseth as follows:

Whereas The Mississippi and Missouri Railroad Company, having been duly organized under and by virtue of the forty-third chapter of the Code of Iowa, entitled "Corporations for pecuniary benefit" approved February 5th, 1851; and the said incorporation having adopted articles of association, on the twenty-second day of December, in the year 1852; and the same having been filed in the office of the secretary of state of Iowa, on the first day of February, A. D. 1853, which said corporation is to commence on the first day of January, 1853, and to continue fifty years; and whereas The Mississippi and Missouri
253 Railroad Company is now engaged in constructing the division of said road extending from Davenport to Iowa City, and the city of Muscatine, a distance of sixty-seven miles, and for that purpose are desirous of raising money by the issue of bonds to the amount of one million of dollars, to be applied to the construction and completion of the said railroad from the city of Davenport to the cities of Iowa and Muscatine, and putting the same into operation, and in order to secure the payment of the money borrowed, it is proposed to execute bonds for the sum of one thousand dollars each, bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first day of July and January in each year, and the principal sum reimbursed on the first day of July, 1875, with the option on the part of the owner of the bond, of converting the same into the stock of the company, at any time previous to the first day of July, 1860, such bonds to be on an equality, so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate signed by the said party of the second part. The bond and certificate to be in the following form, viz:

"UNITED STATES OF AMERICA, *State of Iowa:*

"*Mississippi and Missouri Railroad Company.*

"No. [$1,000.

"The Mississippi and Missouri Railroad Company acknowledge them-

selves to owe to Edward W. Dunham, or bearer, one thousand dollars; which sum said company promise to pay to the said Edward W. Dunham, or to the holder thereof, in the city of New York, on the first day of July, 1875, and also interest thereon, at the rate of seven per cent. per annum, semi-annually, on the first day of each January and July ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest-warrants, at the Corn Exchange Bank, in the city of New York.

"And the said company further agree that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand, payable to bearer.

"And the said company further agree that, on the surrender of this bond, on any of the days for the payment of interest, on or before the first day of July, 1860, the proprietor of this bond shall be entitled to the stock of this company at par, for the face of this bond, in satisfaction thereof, and to a certificate of such stock entitled to draw pro rata dividends from this date.

"In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and treasurer, this first day of July, 1855.

"_____ _____ *President.*
"_____ _____ *Treasurer.*"

"I hereby certify that The Mississippi and Missouri Railroad have executed to me a deed of trust or mortgage, purporting to convey their road and its appurtenances, as specified in the said instrument, in trust for the benefit of the holders of their bonds, of similar tenor as the foregoing, issued and to be issued, to an amount not exceeding in all one million of dollars, with power to take possession of, and use or
254 sell the same, or any part thereof, after a default in paying the interest or principal of said bonds, or any of them; and that the foregoing is one of the several bonds described in and secured by said deed, and that I have caused said deed to be recorded in the several counties of the State of Iowa, through which said road passes.

"_____ _____, *Trustee.*"

Now, therefore, this indenture further witnesseth: That the said Mississippi and Missouri Railroad Company, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the ensealing and delivery hereof, in hand paid, by the said Edward W. Dunham, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said Edward W. Dunham, and his successors, in the trust hereby created, the said railroad, constructed and to be constructed, together with all & singular the railways, land procured or occupied for right of way, together with the bridges, fences, privileges, rights, and real estate owned by said company, or which shall hereafter be owned by them, between the city of Davenport and the cities of Iowa and Muscatine, and all the tolls, incomes, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which shall be procured therefor, together with all the locomotive engines and tenders, passenger cars, and freight cars, shops, tools, and machinery, procured for or connected with the division of sixty-seven miles of road before described, and in any way belonging or

appertaining to the said sixty-seven miles of road now constructed and to be constructed, including all the property of the company on said division, real and personal, and all the rights, credits, and franchises of the company, in said division of railroad: To have and to hold the said premises, and every part thereof, with the appurtenances, unto him, the said Edward W. Dunham, his successors in said office of trustee, in trust for the person or persons, bodies politic or corporate, who shall become holders of the said bonds, or of any of them, about to be issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds, and the provisions of the charter of said company, and the amendments thereto, under which said company derives its powers, and subject to the pos'session, control, & management of the directors of said company, so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of this indenture; and in case the said Mississippi and Missouri Railroad Company shall fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds, at any time when the same may become due and payable according to the tenor thereof when demanded, then, after sixty days from such default, upon the request of the holder of any such bond, the said Edward W. Dunham, and his successors in said trust, may and shall take actual pos'session of said railroad, and of all and singular the property and effects mortgaged, and through the agency of the persons he or they may from time to time appoint, shall receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under this mortgage, first defraying out of the same the expenses of the road and its needful repairs; or the said party of the second part, and his successors in said trust, at his or their discretion, may, or on the written request of
255 the holders of at least one-half of the bonds then unpaid shall, cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in said city, and wherever else required by law, and to execute to the purchaser or purchasers thereof a good and suffici'nt deed of conveyance, in fee simple, for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right or interest or claim in or to said premises, or any part thereof, and said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest on said bonds, and shall restore the residue thereof to the parties of the first part, it being expressly understood, that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws, by the said parties of the first part, to prevent such entry or sale as aforesaid.

It is further covenanted, on the part of the company, that the money loaned on the bonds shall be applied in good faith to the construction of said division of railroad, and the putting the same into operation.

And the said company do further covenant with the said trustee, and his successor in said trust, to make, execute, and deliver, all and singular, such further assurances and instruments as shall from time to time be necessary, and as the said trustee, or his counsel, shall reasonably advise or require, for the better effectuating the objects and purposes

of these presents, and of making them embrace at law said division of railroad, and the property and effects so expressed to be mortgaged, or so to be intended, and to be hereafter acquired for the necessary use of said division of said road.

And it is hereby mutually agreed, and these presents are upon this express condition, that, on payment of the principal and interest of said bonds, the estate hereby granted to said party of the second part shall be void, and the right of the premises hereby conveyed shall revert to and revest in the said parties of the first part, in law and in fact, without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And it is also further mutually agreed that the said party of the second part, his successors in said trust and assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take pos'session of said premises, or any part thereof, or manage the same.

And it is further mutually agreed that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control in the premises shall be divested, cease, and determine; and the said parties of the first part shall, or, in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may apply to the district court of the State of Iowa, sitting in any county in said State to, appoint a new trustee, being a resident in the city of New York, to supply his place; and thereupon such new trustee shall become vested for the purposes aforesaid with all the rights and interests hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance for the same; but, if the same shall be
256 necessary, both, or either of the parties hereto, shall execute any necessary releases or conveyances for that purpose.

In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed, and the same to be subscribed by their president, and the said party of the second part has set his hand and seal, the day and year first above written.

SEAL OF THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

JOHN A. DIX, *President.*
E. W. DUNHAM, *Trustee.*

Signed, sealed, and delivered in the presence of—
A. C. FLAGG.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles I. Bushnell, a commissioner in said State, appointed by the governor of the State of Iowa to administer oaths and affirmations, and to take depositions, affidavits, and the acknowledgment and proof of deeds, &c., to be used or recorded in the State of Iowa, and duly commissioned and sworn, and dwelling in the city of New York, do hereby certify that, on this fourth day of September, one thousand eight hundred and fifty-five, before me personally appeared John A. Dix, president of the Mississippi and Missouri Railroad Company, & Edward W. Dunham, trustee, to me personally known, and acknowledged the annexed conveyance to be their voluntary act and deed, in their respective capacities as president and trustee; also, at the same time and place, appeared A. C. Flagg, treasurer of said company, to me personally known, who, being by me duly sworn, did depose and say that

he is treasurer of the Mississippi and Missouri Railroad Company; that the seal affixed to the annexed conveyance is the corporate seal of said company, and was so affixed by authority of the board of directors of said company, and that by like authority he, together with John A. Dix, subscribed their names as president and treasurer of said company.

In testimony whereof I, Charles I. Bushnell, commissioner as aforesaid, have hereunto set my hand and have affixed hereto my official seal as such commissioner, the 4th day of September, A. D. 1855.

L. S.
CHARLES I. BUSHNELL,
COMMISSIONER, &C.,
NEW YORK.

C. I. BUSHNELL,
Commissioner in the State of New York, appointed by the governor of the State of Iowa, No. 63 Wall street, 3d story, New York City.

Exhibit B.

This indenture, made the first day of July, one thousand eight hundred and fifty-six, between The Mississippi and Missouri Railroad Company of the first part, and Edward W. Dunham, of the city of New York, of the second part, witnesseth as follows:

Whereas The Mississippi and Missouri Railroad Company did, on the twenty-second day of December, 1852, adopt articles of association under and in pursuance of the provisions of chapter forty-third of the code of Iowa, entitled "Corporations for pecuniary benefit," approved February 5th, 1851, which said articles of association were filed
257 in the office of secretary of state of the State of Iowa on the first day of February, 1853, and notice of the filing thereof was duly published, by means whereof it became a body corporate and politic, commencing on the first day of January, 1853, and to continue fifty years from that date.

And whereas The Mississippi and Missouri Railroad Company have now constructed and finished the division of said road extending from Davenport to Iowa City and the city of Muscatine, a distance of sixty-seven miles, and for the purpose of raising money to pay off the contractors and purchase additional equipments for this division of their road, they are desirous of raising money by the issue of a series of second mortgage bonds to the amount of four hundred thousand dollars, to be applied to that purpose; and in order to secure the payment of the money borrowed, it is proposed to execute bonds for the sum of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, on the first days of January and July in each year, and the principal reimbursable on the first day of July, 1876; such bonds to be on an equality, so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times; each of said bonds being authenticated by a certificate signed by the said party of the second part. The bond & certificate to be in the following form, viz:

"UNITED STATES OF AMERICA, *State of Iowa:*

"*Mississippi and Missouri Railroad Company.—Second mortgage sinking fund bonds.*

"No. $1,000.

"The Mississippi and Missouri Railroad Company acknowledge them-

selves to owe to Edward W. Dunham, or bearer, one thousand dollars, which sum said company promise to pay to the said Edward W. Dunham, or to the holder hereof, in the city of New York, on the first day of July, 1876, and also interest thereon at the rate of eight per cent. per annum, semi-annually, on the first day of each January & July, ensuring the date hereof, until the said principal sum shall be paid, on the presentation of the annexed interest warrants, at the Corn Exchange Bank in the city of New York.

"And the said company further agree that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand payable to bearer.

"To secure the payment of the obligation the company have executed a second mortgage on the line of their road extending from the city of Davenport to the cities of Iowa City and Muscatine, in the State of Iowa, and also passed a resolution creating a sinking fund of two and one-half per cent. on the amount of the bonds issued under the second mortgage, to take effect on and after the first day of July, 1859.

"In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president & treasurer this first day of July, 1856.

"JOHN A. DIX, *President.*
"A. C. FLAGG, *Treasurer.*

"I hereby certify that The Mississippi and Missouri Railroad Company have executed to me a deed of trust or mortgage purporting to convey their road and its appurtenances from the city of Davenport to the cities of Iowa City and Muscatine, in the State of Iowa, subject to a first mortgage of one million of dollars on the said division of road, as specified in the said instrument, in trust for the benefit of the holders of their bonds, of similar tenor as the foregoing, issued and to be issued, to an amount not exceeding in all four hundred thousand dollars, with power to take pos'session of and use or sell the same, or any part thereof, after a default in paying the interest or principal of said bonds, or any of them; and that the foregoing is one of the several bonds described in and secured by said deed, and that I have caused said deed to be recorded in the several counties of the State of Iowa, through which said road passes.

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"EDWARD W. DUNHAM, *Trustee.*"

Now, therefore, this indenture further witnesseth that the said Mississippi and Missouri Railroad Company, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the ensealing and delivery hereof, in hand paid, by the said Edward W. Dunham, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and, by these presents, do grant, bargain, sell, transfer, and convey to the said Edward W. Dunhan and his successors in the trust hereby created, the said railroad, constructed and to be constructed, together with all and singular the railways, land used and occupied for right of way, together with bridges, fences, privile*d*ges, and rights owned by said company, or which shall hereafter be owned by them, between the city of Davenport and the cities of Iowa City and Muscatine, in the State of Iowa, and all the tolls, income, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all build-

ings standing thereon, or which shall be procured therefor, together with all the locomotive engines and tenders, passenger cars, and freight cars, shops, tools, and machinery procured for or connected with the division of road before described, and in any way belonging or appertaining to the said division of road now constructed, and to be constructed, including all the property, rights, credits, and franchises of the company in said division of railroad, subject to a previous mortgage of one million of dollars, made between the same parties, on the first day of July, 1855: To have and to hold the said premises, and every part thereof, with the appurtenances, unto him, the said Edward W. Dunham, his successor in said office of trustee, in trust for the person or persons, bodies politic or corporate, who shall become holders of the said bonds, or any of them, about to be issued by said company as aforesaid, subject to the terms and stipulations of the said bonds, and the provisions of the charter of said company, and the amendments thereto, under which said company derives its powers, and subject to the pos'session, control, and management of the directors of said company, so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of this indenture; and in case the said Mississippi and Missouri Railroad Company shall fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds, at any time when the same may become due and payable according to the tenor thereof, when demanded, then, after sixty days from such default, upon the request of the holder of any such bond, the said Edward W. Dunham, and his successors in said trust, may and shall take actual pos'session of said railroad, and of all and singular the property and effects mortgaged, and through
259 the agency of the persons he or they may, from time to time appoint, shall receive the income and profits of said railroad and mortgaged property, for the purpose of paying the bonds issued under this mortgage, first defraying out of the same the expenses of the road and its needful repairs, or the said party of the second part, and his successors in said trust, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid shall, cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in said city, and wherever else required by law, and to execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee-simple for the same; which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right or interest or claim in and to said premises, or any part thereof; the said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest on said bonds, and shall restore the residue thereof to the parties of the first part; it being expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws, by the said parties of the first part, to prevent such entry or sale as aforesaid.

And it is further covenanted on the part of the company, that the money loaned on the said bonds shall be applied in good faith to the

construction of said division of railroad, and the putting the same into operation.

And the said company do further covenant with said trustee, and his successor in said trust, to make, execute, and deliver, all and singular, such further assurances and instruments as shall from time to time be necessary, and as the said trustee or his counsel shall reasonably advise or require, for the better effectuating the objects and purposes of these presents, and of making them embrace at law said division of railroad, and the property and effects so expressed to be mortgaged, or so to be intended, and to be hereafter acquired for the necessary use of said division of said road.

And it is hereby mutually agreed, and these presents are upon this expressed condition, that, on payment of the principal and interest of said bonds, the estate hereby granted to said party of the second part, shall be void, and the right of the premises hereby conveyed shall revert to, and revest in, the said parties of the first part, in law and in fact, without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And it is also further mutually agreed that the said party of the second part, his successors in said trust, and assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust in case he shall be compelled to take possession of said premises, or any part thereof, or manage the same.

And it is further mutually agreed that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control in the premises, shall be divested, cease, and determine; and the said parties of the first part shall, or, in their default to take proceedings therefor for thirty days, the
260 holders of a majority of the said bonds may, apply to the district court of the State of Iowa, sitting in any county, in any State, to appoint a new trustee, being a resident in the city of New York, to supply his place; & thereupon such new trustee shall become vested, for the purposes aforesaid, with all the rights and interests hereby conveyed to, or vested in, the said party of the second part, without any further assurance or conveyance for the same; but if the same shall be necessary, both or either of the parties hereto, shall execute any necessary releases or conveyances for that purpose.

In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed, and the same to be subscribed by their president, and the said party of the second part has set his hand and seal, the day and year first above written.

L. S.
MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

JOHN A. DIX, *President.*
E. W. DUNHAM, *Trustee.*

Signed, sealed, and delivered in the presence of—
A. C. FLAGG, *Witness as to seal.*

STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph C. Lawrence, a commissioner in and for the State of New York, appointed by the governor of the State of Iowa to administer oaths and affirmations, and to take depositions, affidavits, and the acknowledgment and proof of deeds, &c., to be used or recorded in said State of Iowa, duly commissioned, and dwelling in the city of New York,

do hereby certify that, on the eighteenth day of November, A. D. one thousand eight hundred and fifty-six, before me personally came John A. Dix, president of the Mississippi and Missouri Railroad Company, and E. W. Dunham, trustee, to me personally known, and acknowledged mortgage or conveyance to be their voluntary act and deed, in their respective capacity of president and trustee.

Also, at the same time and place personally appeared A. C. Flagg, treasurer of said company, to me personally known, who, being be me duly sworn, did dispose and say that he is the treasurer of the Mississippi and Missouri Railroad Company; that the seal affixed to the annexed conveyance is the corporate seal of said company, and was so affixed by authority of the board of directors, & by like authority, he, together with John A. Dix, subscribed their names as president and treasurer of said company.

In testimony whereof I, Joseph C. Lawrence, commissioner as aforesaid, have hereunto set my hand, and have affixed my official seal as such commissioner.

[SEAL.] JOSEPH C. LAWRENCE,
Commissioner for the State of Iowa.

"*Exhibit C.*"

This indenture, made the first day of July, in the year one thousand eight hundred and fifty-six, between The Mississippi and Missouri Railroad Company of the first part, and Edward W. Dunham, of the city of New York, of the second part, witnesseth as follows:

Whereas The Mississippi and Missouri Railroad Company did, on the twenty-second day of December, 1852, adopt articles of associa-
261 tion under and in pursuance of the provision of chapter forty-third of the code of Iowa, entitled "Corporations for pecuniary benefit," approved February 5th, 1851, which said articles of association were filed in the office of the secretary of state of the State of Iowa, on the first day of February, 1853, and notice of the filing thereof was duly published, by means whereof it became a body corporate and politic, commencing on the first day of January, 1853, and to continue for fifty years from that date.

And whereas The Mississippi and Missouri Railroad Company is now engaged in constructing the division of said road extending from the city of Muscatine to Oskaloosa, a distance of ninety-five miles, and for that purpose are desirous of raising money, by the issue of bonds, to the amount of one million four hundred and twenty-five thousand dollars, to be applied to the construction and completion of the said railroad from the city of Muscatine to Oskaloosa, and putting the same into operation; and in order to secure the payment of the money borrowed, it is proposed to execute bonds for the sum of one thousand dollars each, bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of July and January in each year, and the principal reimbursable on the first day of July, 1876, with the option, on the part of the owner of the bond, of converting the same into the stock of the company at any time previous to the first day of July, 1861, such bonds to be on an equality, so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times; each of said bonds being authenticated by a certificate signed by the said party of the second part; the bond and certificate to be in the following form, viz:

"UNITED STATES OF AMERICA, *State of Iowa:*

"*Mississippi and Missouri Railroad Company—Oskaloosa division.*

"No. $1,000.

"The Mississippi and Missouri Railroad Company acknowledge themselves to owe to Edward W. Dunham, or bearer, one thousand dollars, which sum the said company promise to pay to the said Edward W. Dunham, or to the holder hereof, in the city of New York, on the first day of July, 1876, and also interest thereon at the rate of seven per cent. per annum, semi-annually, on the first day of each January and July ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest-warrants at the Corn Exchange Bank, in the city of New York.

"And the said company further agree that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special indorsement, or by delivery, as if the same were a note of hand payable to bearer.

"And the said company further agree that, after this division shall be completed, and on the surrender of this bond on any of this days for the payment of interest on or before the first of July, 1861, the proprietor of this bond shall be entitled to the stock of this company at par, for the face of this bond, in satisfaction thereof, and to a certificate of such stock entitled to draw pro rata dividends from this date.

"In testimony whereof the said company has hereunto caused to be affixed its corporate seal, and these presents to be subscribed by its president & treasurer this first day of July, 1856.

"JOHN A. DIX, *President.*
"A. C. FLAGG, *Treasurer.*"

262 "I hereby certify that The Mississippi and Missouri Railroad Company have executed to me a deed of trust or mortgage purporting to convey their road and its appurtenances, as specified in the said instrument, in trust for the benefit of the holders of their bonds, of similar tenor as the foregoing, issued and to be issued, to an amount not exceeding in all one million four hundred and twenty-five thousand dollars, with power to take pos'ession of, and use or sell the same, or any part thereof, after a default in paying the interest or principal of said bonds, or any of them, and that the foregoing is one of the several bonds described in and secured by said deed, and that I have caused the said deed to be recorded in the several counties of the State of Iowa through which said road passes.

"EDWARD W. DUNHAM, *Trustee.*"

Now, therefore, this indenture further witnesseth: That the said Mississippi and Missouri Railroad Company, in order to secure the payment of said bonds & interest, and in consideration of the sum of one dollar to them, at the ensealing and delivery hereof, in hand paid by the said Edward W. Dunham, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, & by these presents do grant, bargain, sell, transfer, and convey to the said Edward W. Dunham, and his successors in the trust hereby created, the said railroad, constructed and to be constructed, together with all and singular the railways, land used and occupied for right of way, together with bridges, fences, privileges, and rights owned by said company, or which shall hereafter be owned by them, between the city of Muscatine

and the city of Oskaloosa, and all the tolls, income, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which shall be procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, and machinery procured for or connected with the division of ninety-five miles of road before described, and in any way belonging or appertaining to the said ninety-five miles of road now constructed, and to be constructed, including all the property, rights, credits, and franchises of the company in said division of railroad:

To have and to hold the said premises, and every part thereof, with the appurtenances, unto him, the said Edward W. Dunham, his successor in said office of trustee, in trust for the person or persons, bodies politic or corporate, who shall become holders of the said bonds, or any of them, about to be issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds, and the provisions of the charter of said company, and the amendments thereto, under which said company derives its powers, and subject to the pos'session, control, and management of the directors of said company, so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of this indenture; and in case the said Mississippi and Missouri Railroad Company shall fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds at any time when the same may become due and payable, according to the tenor thereof, when demanded, then, after sixty days from such default, upon the request of the holder of any such bond, the said Edward W. Dunham, and his successors in said trust, may and shall take actual pos'session of said railroad, and of all and singular the property and effects mortgaged, and, through the agency of the persons he or
263 they may from time to time appoint, shall receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under this mortgage, first defraying out of the same the expenses of the road and its needful repairs; or the said party of the second part, and his successors in said trust, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid shall, cause the said premises, or so much thereof as shall be neeessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in said city, and wherever else required by law, and to execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee-simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right or interest or claim in or to said premises, or any part thereof; and said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be neeessary for the payment of said principal and interest on said bonds, and shall restore the residue thereof to the parties of the first part; it being expressly understood that in no case shall any claim or advantage be taken of any valuation, or appraisement, or extension laws, by the said parties of the first part, to prevent such entry or sale as aforesaid.

And it is further covenanted, on the part of the company, that the money loaned on the said bonds shall be applied in good faith to the

construction of said division of railroad and the putting the same into operation.

And the said company do further covenant with the said trustee and his successor in said trust, to make, execute, and deliver all and singular such further assurances and instruments as shall, from time to time, be necessary, and as the said trustee or his counsel shall reasonably advise or require, for the better effectuating the objects and purposes of these presents, and of making them embrace at law said division of railroad, and the property and effects so expressed to be mortgaged, or so to be intended, and to be hereafter acquired for the necessary use for the said division of said road.

And it is hereby mutually agreed, and these presents are upon this express condition, that, on payment of the principal and interest of said bonds, the estate hereby granted to the party of the second part shall be void, and the right of the premises hereby conveyed shall revert to and revest in the said parties of the first part, in law and in fact, without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And it is also further mutually agreed that the said party of the second part, his successors in said trust, and assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take pos'session of said premises, or any part thereof, or manage the same.

And it is further mutually agreed that, in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control of the premises shall be divested, cease, and determine; and the said parties of the first part shall, or, in their default to take proceedings therefor for
264 thirty days, the holders of a majority of the said bonds may, apply to the district court of the State of Iowa, sitting in any county in said State, to appoint a new trustee, being a resident in the city of New York, to supply his place, and thereupon such new trustee shall become vested, for the purposes aforesaid, with all the rights & interests hereby conveyed to or vested in the said party of the second part, without further assurance or conveyance for the same; but if the same shall be necessary, both, or either of the parties hereto, shall execute any necessary releases or conveyances for that purpose.

In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed, and these presents to be subscribed by their president, and the said party of the second part has set his hand and seal the day and year first above written.

L. S.
MISSISSIPPI & MISSOURI
RAILROAD COMPANY.

JOHN A. DIX, *President.*
E. W. DUNHAM, *Trustee.*

Signed, sealed, and delivered in the presence of—
A. C. FLAGG, *witness as to the seal.*

STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph C. Lawrence, a commissioner in and for the State of New York, appointed by the governor of the State of Iowa to administer oaths and affirmations, and to take depositions, affidavits, and the acknowledgment and proofs of deeds, &c., to be used and recorded in the said State of Iowa, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that, on the twenty-seventh day

of September, one thousand eight hundred and fifty-six, before me personally appeared John A. Dix, president of the Mississippi and Missiouri Railroad Company, and E. W. Dunham, trustee, to me personally known, and acknowledged the annexed conveyance to be their voluntary act and deed in their respective capacities of president and trustee.

Also, at the same time and place, personally appeared A. C. Flagg, treasurer of said company, to me personally known, who, being by me duly sworn, did depose and say that he is treasurer of the Mississippi and Missouri Railroad Company; that the seal affixed to the annexed conveyance is the corporate seal of said company, and was so affixed by the authority of the board of directors, and, by like authority, he, together with John A. Dix, subscribed their names as president and treasurer of said company.

In testimony whereof I, Joseph C. Lawrence, commissioner as aforesaid, have hereunto set my hand, and have affixed my official seal as such commissioner.

[L. S.] JOSEPH C. LAWRENCE,
Commissioner for the State of Iowa.

Cross-bill and exhibits of E. W. Dunham.
(Endorsed:) Filed May 9, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the ninth day of May, A. D. 1866, came Thomas E. Walker and Franklin Haven, by John P. Cook, their
265 solicitor, and filed in said clerk's office a cross-bill, which is in the words and figures following, to wit:

In the circuit court U. S., district of Iowa.

THOMAS C. DURANT ET ALS.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et als. } Cross-bill.

The State and district of Iowa.

THOMAS E. WALKER AND FRANKLIN HAVEN, trustees, &c.,
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, junior, John Webber, and Mark Howard.

To the judges of the circuit court of the United States for the district of Iowa:

Thomas E. Walker & Franklin Haven, trustees and mortgagees for sundry parties, the said Thomas E. Walker being a citizen and resident of the State of New Jersey, and the said Franklin Haven being a citizen and resident of the city of Boston in the State of Massachusetts, bring this their cross-bill against Thomas C. Durant, of Brooklyn, in the State of New York; Jacob S. Wetmore and Robert B. Minturn, junior, of the city, county, and State of New York, and all citizens of the State of New York; "The Mississippi and Missouri Railroad Company," a cor-

poration existing and duly organized under and by virtue of the laws of the State of Iowa, and having its principal place of business in the city of Davenport, in the county of Scott and State of Iowa aforesaid; Mark Howard of Hartford, a citizen of the State of Connecticut; and John Webber of Philadelphia, a citizen of the State of Pennsylvania; and thereupon your orators complain and say—

That, heretofore, to wit, on or about the fifth day of February A. D. 1866, the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, filed in this honorable court their certain bill of complaint against the said Mississippi and Missouri Railroad Company and others as defendants, praying the foreclosure of a certain mortgage executed to the said complainants by the said railroad company, and setting forth that your orators, in this cross-bill, as trustees for divers owners of bonds issued by the said railroad company and secured by a certain mortgage on the second division of the said railroad of said company.

And thereafter, to wit, on the ninth day of May, A. D. 1866, the said complainants filed in this honorable court an amendment to their said bill, wherein and whereby they made your orators also parties defendants to their said bill of complaint, and prayed as before in their original bill for the foreclosure of their said mortgage.

Your orators further complain and say that the said Mississippi and Missouri Railroad Company is a corporation organized and existing under and by virtue of the laws of Iowa, for the purpose of building a railroad and operating the same from the eastern line of the State
266 of Iowa, at or near Davenport, in the county of Scott, to the west line of said State at or near Council Bluffs, with power to construct, maintain, and use a branch railroad, from the main line of said road southwesterly by the way of Muscatine to the southern or western boundary of Iowa, or both, and with full power to borrow money, and to execute mortgages on said roads and on other property and franchises of said company to secure the repayment of the same.

That said railroad has constructed and now uses and operates a railroad from said city of Davenport via Iowa City to Kellogg, in the county of Jasper, in said State, a distance of about one hundred and thirty-one miles, with depots, stations, and buildings, and also a branch road from Wilton Junction, on the said main line, via Muscatine to Washington, in Washington County, a distance of about fifty-three miles; and that the said railroad company is also the owner of and in possession and use of a large number of locomotive engines, passenger and freight cars, as well as machine shops, machinery, tools, and implements, and has on hand a large amount of material suitable for the construction and repair of cars and other rolling-stock on its said road, and also a large quantity of wood for fuel.

That said railroad was built in three divisons as follows, to wit:

The first division extends from said city of Davenport to said Iowa City, and also to the city of Muscatine, in Muscatine County.

The second division commences at and extends from said Iowa City to Council Bluffs in said State, but is only partially constructed and operated, viz, to Kellogg, as aforesaid.

The third or Oskaloosa division extends from said city of Muscatine to Oskaloosa, in Mahaska County, but is only partially constructed and operated, viz, to Washington, as aforesaid.

That, on or about the eighth day of May, 1857, the said Mississippi and Missouri Railroad Company being desirous to construct and com-

plete the said second division of its road, to wit, from Iowa City west, as aforesaid, issued its bonds or obligations bearing date the said eighth day of May, 1857, for a large amount, as hereinafter to be stated, each of said bonds being for the sum of one thousand dollars, in order to raise funds for the purpose aforesaid, and to put the said second division of its said road into operation, and for the purpose of securing the payment of such bonds and interest thereon at the rate of seven per cent. per annum, payable semi-annually, the said Mississippi and Missouri Railroad Company on the said eighth day of May, 1857, made, executed, and delivered unto your orator, the said Thomas E. Walker and one Curtis B. Raymond, as trustees, a certain indenture of mortgage under the corporate seal of said company, and duly signed by the president and treasurer of said company.

And your orators hereto annex a true copy of the said indenture of mortgage marked "Exhibit A," and pray that the same may be taken and considered as an integral part of this petition; and your orators hereby refer to said exhibit for greater certainty and more full recitations as to the stipulations and agreements therein contained, and in this pleading or bill of complaint to be mentioned or referred to.

That in the said indenture of mortgage it is recited that the said railroad company had become entitled to a large amount of public lands of the United States, situate in the State of Iowa, pursuant to the provisions of an act of Congress, approved the fifteenth day of May, 1856, and entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said
267 State," which act is incorporated in and fully set forth in said indenture, and reference is hereby made for a copy thereof to said Exhibit A made a part hereof as aforesaid.

And in said indenture of mortgage it is further recited that the grant made by the act of Congress aforesaid was accepted by the general assembly of the State of Iowa, by an act approved the 14th day of July, 1856, entitled "An act to accept of the grant, and to carry into execution the trust conferred upon the State of Iowa by an act of Congress, entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856;" which act of the general assembly of the State of Iowa is also fully and correctly set forth in said indenture, and reference is hereby made for a copy thereof to said Exhibit A, made a part hereof as aforesaid.

And it is further recited in said mortgage that the general assembly of the State of Iowa, for the purpose of carrying out and facilitating the objects of the grant made by the said acts, passed a supplementary act, which was approved the twenty-eighth day of January, 1857; which act of the general assembly of the State of Iowa, last aforesaid, is also embraced and fully recited in said indenture, and reference is hereby made for a copy thereof to said Exhibit A, made a part hereof as aforesaid.

And in and by said mortgage it is further recited & stipulated that the said Mississippi and Missouri Railroad Company, for the purpose of raising funds from time to time for the construction and completion of the portion of railroad hereinafter described, (viz, the said second division of its said road,) and other purposes, proposed to execute and deliver to said trustees its construction bonds or obligations, in pursuance of the provisions of the act of the general assembly of the State of Iowa last-above referred to, approved the twenty-eighth day of January, 1857, and thereby to become indebted to various persons, bodies politic or corporate, who should become holders of the said construction bonds or ob-

ligations, in the sum of seven millions of dollars, secured to be paid by seven thousand bonds or obligations of said company of and for the sum of $1,000 each, to be issued and secured by the terms and conditions of said indenture of mortgage; each of which bonds should provide for the payment unto the holders thereof of the sum of $1,000 on the eighth day of May, 1877, and also for the interest thereon, at the rate of seven per cent. per annum, payable on the eighth day of November and May ensuing the date of said bonds, until the principal sums therein named should be paid and satisfied, according to the tenor hereof; each of the said bonds to be authenticated by a certificate signed by the said trustees, and to be in a form set forth in said indenture; and ref'rence is hereby had to said Exhibit A, made a part hereof as aforesaid, for a copy of the said bonds, and of the certificate of said trustees.

And in and by said indenture of mortgage, the said Mississippi and Missouri Railroad Company did covenant and agree to pay to the holders of said bonds the said principal sums of money therein mentioned, and that if any default should be made in the payment, either of principal or interest on any of said bonds for sixty days after demand at the place of payment when the same became due, then the said trustees may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into, and take pos'session of, said division of railroad, and all of its appurtenances, and all the property conveyed by said indenture of mortgage; and, if default should con-
268 tinue for one year after or from the time of such demand and refusal, the principal sum of such bonds should become due and payable, and the said trustee may sell said road or property, and apply the proceeds as in and by said indenture is provided.

And the said mortgage further provides that in case a vacancy should happen in the number of trustees therein mentioned, the remaining trustees should, while said vacancy exists, have all the rights, and exercise all the powers devolving on both said trustees until another trustee shall be appointed; which appointment should be made in a manner pointed out and stipulated for in said indenture.

And that thereupon the said Mississippi and Missouri Railroad Company, for securing the payment of the sums of money mentioned in the said bonds or obligations, and the interest thereon, and also for and in consideration of the sum of one dollar, in hand paid by the trustees aforesaid, did, in and by the said indenture of mortgage, grant, bargain, sell, convey, and confirm unto the said trustees, and their successors who might be appointed or selected as provided for in said mortgage, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad, then owned, or thereafter to be acquired, by said company, consisting or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri River, being a part of the railroad of said company, extending from the city of Davenport, on the Mississippi River, to said Council Bluffs, on the Missouri River, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, appurtenant to the above-described division of said railroad, and all the franchises, rights, and privile*d*ges appurtenant to said division, then existing or thereafter to be acquired.

Also, all right, title, interest, claim, or demand which said Mississippi & Missouri Railroad Company then had, or should thereafter acquire, in or to all public lands of the United States, granted by the above-cited act of Congress, approved May 15th, 1856, to the State of Iowa, and by the general assembly of said State, by the above-recited act, approved

July 14th, 1856, to the said Mississippi and Missouri Railroad Company; subject, however, to the terms and conditions of the above-recited act of Congress, and the above-recited acts of the general assembly of the State of Iowa, with all the estate, right, title, and interest, property and pos'session, claim and demand, whatever, in law or in equity, of the said railroad company in and to the same, and each and every part and parcel thereof, excepting, saving, and reserving to the said railroad company all lands then owned, or thereafter to be acquired, by said company, which may not be included in the said grant of public land from the United States, and may not be neeessary for the uses and purposes of said railroad, and the depots and right of way thereof:

To have and to hold all and singular the lands and premises thereby granted, or intended to be granted, and each and every part or parcel thereof, with the appurtenances thereunto belonging, unto the said trustees, or to the survivor of them, and their successors appointed or selected in the manner provided in said mortgage, for the uses and purposes, and upon the trusts, terms, and conditions in said indenture set forth and declared.

Which said mortgage was made subject to a promise or condition in said indenture contained, to wit, that if the said railroad company should well and truly pay, or cause to be paid to the holders of the said bonds and every of them the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon, at the time and in the manner as in said indenture provided, ac-
269 cording to the true intent and meaning of said indenture, that then and thenceforth said indenture and the estate thereby granted should cease and determine, and all the right, title, and interest in all and any property thereby conveyed to said trustee', not then disposed of by them under the powers thereby conferred upon them, should revert to and vest in the said railroad company.

And said mortgage further witnessed that it and the said bonds or obligations were made, executed, and delivered upon certain terms, conditions, and agreements which are therein recited; and for said terms, conditions, and agreements ret'rence is hereby had to said mortgage, a copy of which is made part hereof as aforesaid, wherein said terms, conditions, and agreements are set forth and declared; all of which will fully and at large appear by ref'rence to said mortgage, a copy of which is hereto annexed as aforesaid, and made a part hereof.

Said indenture of mortgage was duly recorded in the proper office, in the said county of Scott, and in all the counties through which the said railroad runs, and in which the property thereby conveyed is situated.

And your orators further show to your honors that the said Mississippi and Missouri Railroad Company, in pursuance of its intention, as recited in said mortgage, did execute and issue under their corporate seal a series of bonds or obligations called or known as first mortgage construction or land-grant bonds, bearing even date with said mortgage, whereby said company promised and agreed to pay to the bearers of said bonds respectively the sums therein expressed, on the eighth day of May, 1877, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually, on the eighth day of November & May, ensuing the date thereof, until the principal sum should be paid.

And your orators further show that the aggregate principal sum of the bonds, so executed and delivered by said railroad company as aforesaid, and secured by the said indenture of mortgage, and now actually outstanding, is the sum of three million and six hundred and sixteen thousand ($3,616,000) dollars.

The said bonds are now held and owned by divers persons who have paid value for the same, and are valid and subsisting obligations against said company to the full amounts thereof, together with the interest due and unpaid thereon.

And your orators further show that, since the execution of the said mortgage and the acceptance of the trust by your orators, the said Thomas E. Walker and by the said Curtis B. Raymond, the said Curtis B. Raymond has resigned his trust and refused to act further in the premises; and that, upon the resignation of said Raymond, your orator Franklin Haven has been duly appointed a trustee and successor in place of said Raymond, in the manner provided for in said indenture of mortgage, and has duly accepted said trust in connection with your orator, the said Thomas E. Walker.

And your orators herewith file, and exhibit to your honor, a schedule or list, showing the lands conveyed to the said railroad company by the acts of Congress, and the general assembly of the State of Iowa, as aforesaid, as well other lands acquired by purchase, upon which the said indenture of mortgage is a lien, and which were mortgaged by the said company to your orators in trust, as aforesaid, to secure the payment of the said bonds or obligations of the said company.

The said schedule of lands so granted by Congress, and the State of Iowa, to said defendant The Mississippi and Missouri Railroad
270 Company, is contained in a bound book, deposited with the clerk of said court, and filed with this petition, the same not being suitable to attach hereto.

Further complaining, your orators show unto your honor that the condition of the said mortgage has been broken, and the said Mississippi and Missouri Railroad Company is in default in this, to wit, that the said railroad company has failed and refused to pay, or cause to be paid to the owners or holders of said bonds secured by said mortgage as aforesaid, or to any of them, the said semi-annual interest due and payable thereon, at the times and in the manner specified in said bonds, although payment thereof has been duly demanded at the place of payment when the same became due, and that there is now due for interest in arrear on said bonds a large sum of money, now amounting, according to your orator's information and belief, to about the sum of six hundred and eighty-one thousand eight hundred and eighty-four ($681,884) dollars, at the date of filing this bill, that is to say, the sum of $253,500 00, or thereabouts, for interest accrued and maturing on or prior to the eighth day of May, 1864, the c'upons representing which said interest have been conditionally funded or deposited with a trustee by the owners thereof, and interest on said last-mentioned sum, at the rate of seven per cent. per annum, from the first day of January, A. D. 1865; also, a further sum of $12,550 99, or thereabouts, for interest accrued and maturing on or prior to the eighth day of May, 1864, the c'upons representing which said interest have also been conditionally funded as aforesaid, and scrip issued therefor and interest on said last-mentioned sum, at the rate of seven per cent. per annum, from the eighth day of May, 1864; and also a further sum for interest due and unpaid upon said bonds, upon and prior to the eighth day of November, 1864; and also the interest due on the whole of said bonds outstanding, on the eighth day of May, A. D. 1865; and also interest due on the whole of said bonds outstanding, on the eighth day of November, A. D. 1865; and further, such additional interest as has accrued on the said principal sum of said bonds since the said eighth day of November,

1865, and interest at seven per cent. per annum, upon the unpaid interest c'upons since default in the payment thereof.

Wherefore, and in pursuance of the terms of the said mortgage as hereinbefore set forth, your orators, as trustees for the holders of the said bonds, charge that the principal sums of the said bonds have become due & payable, and that your orators in behalf of the said bondholders are entitled to a foreclosure of said mortgage and an enforcement of the lien thereof for the entire principal and unpaid interest so secured by said mortgage as aforesaid.

And your orators further show that they have been requested and directed by the owners and holders of a number of said bonds, exceeding in amount the sum of one hundred thousand dollars, to institute proceedings to foreclose the said mortgage by suit, and cause the property to be sold to satisfy the amount due said bondholders for principal and interest.

And your orators further show unto your honor, that the said defendants Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, are, as your orators are informed and believe, trustees for divers persons holding a class of bonds issued by the said Mississippi and Missouri Railroad Company on or about the tenth day of December, 1861, which bonds are secured, or intended to be secured, by a certain indenture of mortgage executed and delivered to said trustees by the said railroad company, and dated on or about the said
271 tenth day of December, 1861, but your orators charge that the lien of said mortgage and the rights of said trustees and bondholders thereunder, are subject and junior to the mortgage of your orators, and inferior to the rights of your orators, and the holders of the bonds secured by the mortgage executed by said railroad company to your orators as aforesaid.

And that the said defendants John Webber & Mark Howard have, or claim to have, some lien or claim upon the railroad and other property mortgaged to your orators as aforesaid, by virtue of certain judgments by them recovered against said railroad company, but your orators charge that such judgments or liens are subject to and inferior to the lien of your orators' mortgage.

Further complaining, your orators show unto your honor that, as your orators are informed and believe, and therefore charge the truth to be, the said Mississippi and Missouri Railroad Company is now, and has always been since the construction of said division of said road, in actual possession thereof, and using and operating the same, & receiving the earnings and profits of said road; and should, by its promises and undertakings in said bonds and said mortgage to your orators, have applied such earnings, after the payment of the necessary expenses, to the payment of the c'upons for interest issued with and attached to said bonds, but the said railroad company has utterly failed and refused to apply its earnings in payment of said interest, and has used and applied the nett earnings of said division to other purposes and other objects, in violation of its covenants and agreements so contained in said bonds and mortgage; that the accumulating interest is constantly increasing the amount of the indebtedness so secured by said mortgage, while the property mortgaged is decreasing in value, thus endangering the rights and security of the holders of said bonds; and your orators aver that the said Mississippi and Missouri Railroad Company is insolvent, and unable to pay its debts and liabilities.

All which actings, doings, pretenses, and refusals, are contrary to

equity and good conscience, and tend to the manifest wrong and injury of your orators and their cestui que trust in the premises.

In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said defendants may show cause, if any they have, why your orators should not have the relief herein prayed, and that the said Mississippi and Missouri Railroad Company, upon the corporal oaths of the officers thereof, and the other defendants upon their several and respective corporal oaths, may, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, distinct, & perfect answer make to all & singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that the said railroad company may, in manner aforesaid, answer and set forth, from its books and records, and from such other source or sources of information as the said railroad company or its officers may have or be able to obtain, a full, true, & perfect account of the amount of bonds by said company issued and secured by your orators' said mortgage, and of the amount of interest due and unpaid thereon, and further, what disposition, if any, was made of any unpaid c'upons representing interest on said bonds, which fell due or matured on or before the 8th day of November, 1864, and the present condition of such unpaid interest c'upons,
272 and that said railroad company may state fully how much of the rolling-stock of said road belongs to the said second division of said railroad:

And your orators further pray that an account may be taken by and under the direction of this honorable court of the amount due upon the said bonds so secured by the mortgage to your orators as aforesaid, both for principal and unpaid interest thereon, and that the said Mississippi and Missouri Railroad Company may be decreed to pay to the holders of said bonds, respectively, the sum or sums which shall appear to be due thereon, upon the taking of such account as aforesaid, together with your orators' costs of suit; and that, in default of such payment, the said mortgaged property, to wit, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad now owned by the said railroad company, constituting or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri, being a part of the railroad of said company, extending from Davenport, on the Mississippi, to said Council Bluffs, on the Missouri, together with all the locomotives, cars, buildings, machinery, tools, and implements whatever appurtenant to the above-described division of said railroad, and all the franchises, rights, and privileges appurtenant to said division; also, all right, title, claim, interest or demand of the said railroad company in or to all said lands granted by the said act of Congress by the United States to the State of Iowa, and by the said State of Iowa to the said company; and all other property, estate, claims, rights, and interests of every description whatsoever, covered and conveyed, or intended to be covered and conveyed, by said mortgage, may be sold by and under the direction of this court by the marshall of said district of Iowa, or by a master to be appointed therefor by this court, at public auction, to the highest bidder for cash, or its equivelent; & that, upon such sale, the said marshall or master, by whom such sale shall have been made, may execute and deliver all proper and necessary conveyances, deeds, or

other instruments to the purchaser or purchasers of such sale, which shall vest in him or them the absolute title to all and singular the property so sold and that the said purchaser or purchasers may thereupon be put in full and actual po'session of all and singular the property sold to them as aforesaid; and that upon said sale the said defendants, and all and each of them, and all and every person claiming by, through, or under them, or any of them, be forever barred and, foreclosed of and from all and every right, interest, claim, title, demand, or equity of redemption in or to the said property, and every part thereof:

And that the money arising from such sale may be brought into court, and that there be paid thereout, first, the necessary expenses of your orators in their trust, including the cost and charges of this court, and the outlay of your orators for counsel and attorneys' fees; and, secondly, the amounts found due to the holders of said bonds for the principal and interest of their said bonds or obligations, respectively:

And that your orators may have such other and further relief in the premises as the nature of the circumstances of this case may require, and to your honour may seem meet & agreeable to equity and good conscience:

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to all of said defendants, thereby commanding them, and each of them, at a certain day, and under a certain penalty therein to be inserted, personally to be and appear before your honors in this honorable
273 court, and then and there answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet; and your orators will ever pray, &c.

JNO. P. COOK,
Solicitor for Complainant.

THOS. E. WALKER.
FRANKLIN HAVEN.
Complainants.

"*Exhibit A.*"

This indenture of mortgage, made this eighth day of May, in the year of our Lord eighteen hundred and fifty-seven, between The Mississippi and Missouri Railroad Company, a company organized under and in conformity to the acts of the general assembly of the State of Iowa, of the first part, and Thomas E. Walker, of the city of New York, and Curtis B. Raymond, of the city of Boston, parties of the second part, they being trustees for the uses and purposes, and upon the terms and conditions hereinafter set forth, witnesseth:

Whereas the party of the first part has become entitled to a large amount of public lands of the United States, situate in the State of Iowa, pursuant to the provisions of an act of Congress, approved the fifteenth day of May, eighteen hundred and fifty-six, entitled "An act making a grant of lands to the State of Iowa in alternate sections," to aid in the construction of certain railroads in said State, which act is in the following words, to wit:

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi River, to a point on the Missouri River, near the mouth of the Platte River; from

the city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-line Railroad near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel across the said State to the Missouri River; from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tête des Morts to the nearest point on said road, every alternate section of land designated by odd numbers for six sections in width on each side of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof, granted as aforesaad, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the State of Iowa for the use and purpose aforesaid: *Provided*, That the land to be so located shall, in no case, be further than fifteen miles
274 from the lines of said roads, and selected for and on account of each of said roads: *Provided further*, That the lands hereby granted for and on account of said roads severally, shall be exclusively applied in the construction of that road for and on account of which said lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby, reserved to the United States from the operations of this act, except so far as may be found necessary to locate the routes of said railroads through said reserved lands, in which the right of way only shall be granted, subject to the approval of the President of the United States.

"SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States within six miles on each side of said roads shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

"SEC. 3. *And be it further enacted*, That the said lands hereby granted to the State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

"SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following; that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads may be sold; and when the

governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not exceeding one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold; and so, from time to time, until said roads are completed, and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

"SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post Office Department, at such price as Congress may by law direct; *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same."

And whereas the grant made by the above-recited act of Congress was accepted by the general assembly of the State of Iowa, by an act approved the fourteenth day of July eighteen hundred and fifty-six, entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa, by an act of Congress, entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856," which act of the general assembly of the State of Iowa, is in the following words, to wit:

"SECTION 1. *Be it enacted by the general assembly of the State of*
275 *Iowa*, That the lands, rights, powers, and privileges granted to and conferred upon the State of Iowa by the act of Congress, entitled 'An act making a grant of lands to the State of Iowa in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856, be, and the same are hereby, accepted upon the terms, conditions, and restrictions contained in said act of Congress.

"SEC. 2. That so much of the lands, interests, rights, powers, and privileges as are or may be granted and conferred in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Burlington, on the Mississippi River, to a point on the Missouri near the mouth of Platte River, are hereby disposed of, granted, and conferred upon the Burlington and Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.,

"SEC. 3. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Davenport via Iowa City and Fort Des Moines, to Council Bluffs, are hereby disposed of, granted, and conferred to and upon the Mississippi and Missouri Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

"SEC. 4. That so much of the lands, interest, rights, powers, and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-line Railroad near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel across the State to the Missouri River, are hereby disposed of, granted, and conferred to and upon the Iowa Central Air-line Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

"SEC. 5. That so much of the lands, interests, rights, powers, and

privileges as are or may be granted and conferred in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri River, to or near Sioux City, with a branch from the mouth of the Tête des Morts to the nearest point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted, & conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

"SEC. 6. The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next after the passage of this act, and maps or plots showing such lines and routes shall be filed in the office of the governor of the State of Iowa, & also in the office of the secretary of state of the State of Iowa. It shall be the duty of the governor, after affixing his official signature, to file such map in the department having the control of the public land in Washington, such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid for the construction of the several lines above indicated, cannot be obtained by the said companies within the limits and along any part of the line aforesaid, the governor shall from time to time appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensa-
276 tion of such agents, and the costs, expenses, and charges attendant upon, and occasioned by, making such selections, shall be fixed, regulated, paid, and borne by each of said railroad companies respectively, upon and for its own line.

"SEC. 7. The Iowa Central Air-line Railroad Company shall furnish, equip, and operate the branch of their railroad that will be constructed under this grant from Lyons City to the point of intersection with the main line of their road near Maquoketa, in the same manner with their main line from the west, and as completely as though the same was a continuation of said main line, and shall never give any pref'rence to the main line of said road, or any part thereof, as defined in their articles of incorporation, by business arrangements, tariff of prices, or otherwise, over the said branch of their railroad.

"SEC. 8. The grants aforesaid are made to each of said companies respectively upon the express condition that, in case either of such railroad companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D. 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time aforesaid.

"SEC. 9. The roads aforesaid shall be constructed upon a *guage* with a width of four feet eight and one-half inches, and the iron used in the track shall be of approved quality and pattern, and the said roads shall be completed and finished in a style and of a quality equal to the average of other first-class western roads; and when the roads or any of them, authorized to be constructed by this act, shall be intersected by the roads of any other railroad company now constructed, or hereafter to be constructed, it shall be the duty of such road or roads receiving the benefit of this act, to furnish all proper and reasonable facili-

ties, and to join such other company in making all necessary crossings, turn-outs, sidings, and switches, and other conveniences necessary for the transportation of all freight and passengers over either or any road or roads hereby mutually accommodated, whether said passengers or freight are brought by the roads benefit'ed by this act or any other road or roads now constructed, or which may hereafter be constructed, and at such rates as shall not in any case exceed the regular tariff of charges on such road or roads.

"SEC. 10. All persons who, at the time the said grant was made, held valid claims, by actual occupation and improvement, upon any of the lands embraced in said grant, shall be protected in the same, and entitled to purchase and enter the same upon the terms and conditions hereinafter provided.

"SEC. 11. Any person wishing to avail himself of the provisions of this act shall, within three months of the passage thereof, file his application for that purpose with the judge of the county where such lands may be situate, and shall prove to the satisfaction of said judge that his claim is valid, and that the same existed at the time said grant was made; and, upon such proof being made, such judge shall give to the applicant a certificate of the fact, and such certificate shall entitle the holder, or his bona fide assignee, to enter such land at the rate of two dollars and fifty cents per acre: *Provided*, That no person, claimant, or assignee of a claim, shall be entitled to more than one hundred and sixty acres under this act: *And provided further*, That the person
277 asserting the claim, whether as claimant or assignee, shall file his affidavit that he has not, either directly or indirectly, received the benefits of the provisions of this act. Before any rights shall be acquired under such certificate, a copy of the same, together with the evidence, shall be served on the secretary of the company interested, and such company shall have the right of appeal from the decision of such judge to the district court, in the same manner as appeals are taken from the decisions of a justice of the peace, at any time within ninety days after the service of such papers, and the same shall be tried as other appeal cases, and an appeal may be taken to the supreme court by either party, in the same manner as appeals in other cases.

"SEC. 12. Such certificate, on being filed with the secretary of the company upon whose line of road said lands may be situate, when no appeal has been taken as herein provided, shall entitle the holder or his assignee to the pos'session of said land until the tittle shall become vested in the company. Upon payment thereafter to the treasurer of the company for said land, at the price above designated, such person shall receive from the secretary of the company a patent to such land, not exceeding in quantity one hundred and sixty acres. Such deed or patent shall vest in the purchaser all the title of said company in and to such lands, except so far as to reserve to the company all such right of way and station grounds as may be actually necessary for the uses of the company.

"SEC. 13. The said companies shall each severally assent to and accept the provisions of this act by a written instrument, under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the secretary of state, and be by the secretary recorded in the book by him kept for the recording of the articles of association.

"SEC. 14. Said railroad companies accepting the provisions of this act shall at all times be subject to such rules and regulations as may,

from time to time, be enacted and provided for by the general assembly of Iowa, not inconsistent with the provisions of this act, and the act of Congress making the grant.

"SEC. 15. It shall be the duty of the companies receiving the benefit of this act, to make a regular annual report of their proceedings at the usual time and place of electing their officers, exhibiting a detailed statement, as far as practicable, of the amount of their expenditures, liabilities, &c., a copy of which shall be filed in the office of the secretary of state.

SEC. 16. *Be it further enacted*, That any of the companies accepting the grants of lands under this act shall take the same with the conditions imposed and incumbrances specified in this act, and shall, in no event, have any claim or recourse whatever upon the State of Iowa for a misapplication of said grant, incumbrances, or conditions in this act imposed.

"SEC. 17. This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter and Iowa City Republican."

And whereas the general assembly of the State of Iowa, for the purpose of carrying out and facilitating the objects of the grants made by the above-recited acts, passed a supplementary act, which was approved the twenty-eighth day of January, eighteen hundred and fifty-seven, and is in the following words, to wit:

"SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the said companies may make such disposition of their prop-
278 erty, real, personal, and mixed, and of the lands granted by the act to which this is a supplement, by mortgage or deed of trust, as may be deemed proper, for the purpose of securing any amount of construction bonds necessary for the completion of such roads, which may bear such rate of interest, not exceeding ten per cent. per annum, and may sell the same for the best price that can be procured. Said companies, nor either of them, shall ever be allowed to plead that such bonds are usurious or invalid: *Provided*, That the moneys realized from the sale of the bonds aforesaid shall be applied exclusively to the construction and equipment of said roads.

"SECTION 2. Any mortgage or deed of trust made upon the lands, roads, or other property of either, shall bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling-stock. And the purchasers under a trustees' sale or a foreclosure of mortgage, shall have and enjoy all the rights of a purchaser on execution sale: *Provided further*, That nothing contained in this act shall be so construed as in any manner to interfere with, change, or modify the rights of this State or of the United States to any lands granted by Congress to this State, and by this State to certain railroad companies therein, as a security for the completion of said roads, or to transfer any right in said lands otherwise than as subject to all the conditions imposed by the grant made by the United States to this State, and by the grant by this State to said companies, or by either of said grants: *And provided further*, That the faith of the State is in no way pledged for the payment of said bonds.

"SECTION 3. Any mortgage or trust deed made as before mentioned shall be recorded in the office of the recorder of each county through which said road runs, or wherein it owns or holds lands, and shall be notice to all the world of the rights of all parties under the same.

"SECTION 4. This act shall take effect from and after its publication in the Iowa Capital Reporter and the Iowa City Republican."

And whereas the party of the first part, for the purpose of raising

funds from time to time for the construction and completion of the portion of railroad hereinafter described, and the payment of the necessary expenditures for that purpose, proposes to execute and deliver to the parties of the second part its construction bonds or obligations, in pursuance of the provisions of the last above recited act of the general assembly of the State of Iowa, approved the twenty-eighth day of January, 1857, and thereby to become indebted to various persons, bodies politic or corporate, who shall become holders of the said construction bonds or obligations, in the sum of seven millions of dollars, lawful money of the United States, secured to be paid by seven thousand construction bonds or obligations of said company, of and for the sum of one thousand dollars each, making in the whole the said sum of seven millions of dollars, to be issued and secured by the terms and conditions of this instrument, each of which bonds shall provide for the payment unto the said persons, bodies politic or corporate, who may become the holders thereof, the sum of one thousand dollars, on the eighth day of May, eighteen hundred and seventy-seven, and also for the interest on the same at the rate of seven per cent. per annum, payable on the eighth day of November and May ensuing the date of said bonds, until the principal sums named therein respectively shall be paid and satisfied, according to the tenor thereof, each of the said bonds to be authenticated by a certificate signed by the said trustees, and to be in the following form, viz:

279 UNITED STATES OF AMERICA, *State of Iowa:*

No. $1,000

Mississippi and Missouri Railroad Company.—Construction bond.—Secured by mortgage on land grant and railroad.—Length of road mortgaged, 257 miles.

The Mississippi and Missouri Railroad Company acknowledge themselves to owe to Clark Durant, or bearer, one thousand dollars, which sum said company promise to pay to the said Clark Durant, or to the holder hereof, at their office in the city of New York, on the eighth day of May, 1877, and also interest thereon at the rate of seven per cent. per annum, semi-annually, on the eighth day of each November and May ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest-warrants at the office of the company in the city of New York.

The payment of the construction bonds is secured by a deed of trust or mortgage upon the railroad of the company, and upon the lands granted to aid in its construction, as specified in said deed of trust, or mortgage, in the annexed certificate of the trustees.

But the company reserve the right to purchase this obligation at any time, by agreement with the holder, or to redeem the same at the par value thereof, on any of the days specified for the payment of interest, by advertising their intention so to do in two newspapers published in the city of New York, and one published in the city of London, at least twelve months previous to the day when said bonds are to be redeemed.

The numbers of the bonds to be called in to be determined by lot.

In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and treasurer, this eighth day of May, 1857.

President.
Treasurer.

The undersigned trustees do hereby certify that The Mississippi and Missouri Railroad Company have executed to us a deed of trust, or mortgage, purporting to convey their road and equipments, and all appurtenances thereto, from the city of Iowa City to the city of Council Bluffs, and also all the right, title, and interest which the said company now have or shall hereafter acquire, in and to all lands of the United States, granted by act of Congress approved May 15th, 1856, to the State of Iowa, and by the general assembly of the State of Iowa, by act approved July 14th, 1856, granted to the Mississippi and Missouri Railroad Company, as specified in the said instrument, in trust for the benefit of the holders of their bonds, of similar tenor as the foregoing, issued and to be issued to an amount not exceeeding in all seven millions of dollars, with power to take pos'session of said railroad, its equipments and appurtenances, to sell or use the same, or any part thereof, in case of a default in paying the interest or principal of said bonds, or any of them, and with power to sell the lands so conveyed, and apply the proceeds to the payment of said bonds, and that the foregoing is one of the several bonds described in and secured by said deed, and that we have caused the said deed to be recorded in the several counties through which the said road passes, and in which the said lands are situated.

Trustees.

280 Now, therefore, this indenture witnesseth: That the said party of the first part, for securing the payment of the sums of money mentioned in the said construction bonds or obligations, and the interest thereon, and also for and in consideration of the sum of one dollar in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said parties of the second part, and to their successors, who may be appointed or selected in the manner and according to the conditions hereinafter set forth, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad, now owned or hereafter to be acquired by said party of the first part, constituting or belonging to the railroad of said party of the first part, extending from Iowa City in the State of Iowa, to Council Bluffs, on the Missouri River, being a part of the railroad of said company, extending from the city of Davenport, on the Mississippi River, to said Council Bluffs, on the Missouri River, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, appurtenant to the above-described division of said railroad, and the franchises, rights, and privile*d*ges appurtenant to said division, now existing or hereafter to be acquired.

Also all right, title, interest, claim, or demand which the said party of the first part now has or shall hereafter acquire in or to all public lands of the United States granted by the above-recited act of Congress, approved May 15th, 1856, to the State of Iowa, and by the general assembly of said State by the above-recited act, approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company, the party of the first part; subject however, to the terms and conditions of the above-recited act of Congress, and of the above-recited acts of the general assembly of the State of Iowa, with all the estate, right, title, and interest, property and pos'session, claim and demand whatever, at law or in equity, of the said party of the first part, in and to the same and each and every part and parcel thereof, excepting, saving, and reserving to the party of the first part all lands now owned or herereafter to be acquired by said first party, which may not be included in the said grant of public land

from the United States, and may not be necessary for the uses and purposes of said railroad, and the depots and right of way thereof:

To have and to hold all and singular the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, or to the survivor of them, and their successors appointed or elected in manner hereinafter provided, for the uses and purposes, and upon the trusts, terms, and conditions in this indenture set forth and declared.

Provided, always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of the said construction bonds and every of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon, at the times and in the manner as hereinbefore provided, according to the true intent & meaning of these presents, that then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title, and interest in any and all property hereby conveyed to the parties of the second part, not then disposed of by them, under the powers hereby conferred upon them, shall revert to and vest in the party of the first part.

281 This indenture further witnesseth: That these presents, and the said construction bonds or obligations, are made, executed, and delivered upon the terms, conditions, and agreements following, that is to say—

First. That the actual pos'session, management, use, and control of said division of railroad and appurtenances shall be and remain with the party of the first part, without molestation or interference of the parties of the second part, so long as the said construction bonds or obligations shall remain without default or forfeiture, and said party of the first part shall perform and keep the stipulations thereof.

Second. It is agreed that all the construction bonds which shall be executed and issued by the party of the first part, under the provisions of this indenture, shall be delivered to the parties of the second part, to be countersigned by them as trustees under this instrument; and that said bonds when so delivered and perfected may be sold or disposed of by the parties of the first part, and the avails thereof shall be applied to the construction of said road, according to the terms of this instrument.

Third. The avails of the sales of said construction bonds shall be applied to the payment of the expenditures for the construction of the said division of railroad in manner following, to wit:

The said party of the first part will make contracts for the construction of said road, and for materials to be used therein; and whenever payments shall become due thereon to parties executing the same for work actually done, or materials actually furnished, and the quantity, quality, and cost of such work or materials shall be certified by the chief engineer of said railroad company, the said payment shall be made out of any funds arising from the sales of said construction bonds.

It is further agreed between the parties hereto, that all the lands granted by the act of Congress above recited to the State of Iowa, and by the above-recited act of the general assembly of said State to the party of the first part, shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit, or terms of payment, and such other conditions as shall be

agreed on by the parties to this indenture, and as shall seem to said parties best calculated to secure the payment in full of all the construction bonds issued as hereinbefore provided; but no title to any tract of land, contracted to be sold by the said party of the first part, shall be given until the whole purchase-money of said tract shall be paid to said parties of the second part in cash or construction bonds.

And for this purpose it is agreed that the parties to this indenture shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined and surveyed, & shall affix to each tract or parcel such a price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor, the prices being, nevertheless, at times subject to revision and alteration by the said parties; provided, that the party of the first part may reserve from sale any lands neessessary for depot grounds or other purposes connected with the operations of the railroad.

The purchaser shall at all times be at liberty to pay for any lands purchased by him in the aforesaid construction bonds at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds or cash, as hereinbefore provided, the same shall
282 be conveyed by the parties to this indenture to the purchaser in fee-simple, and shall by such conveyance be absolutely and forever released from any and all lien or incumbrance, for or on account of said bonds, or any other debt or obligation of said party of the first part.

The parties of the second part shall and will cancel and discharge each and every construction bond and obligation, and the interest-warrants thereon, which they may receive in payment for land, or by purchase, by defacing the seal of the corporation, perforating the signatures of the president and treasurer, and drawing lines across each of the interest-warrants on receipt thereof. And all construction bonds received in payment of lands as aforesaid shall, when so cancelled, be delivered to the party of the first part.

It is hereby agreed by the parties to this indenture that a portion, not exceeding five per cent. of the avails of the sales of the lands conveyed to the parties of the second part by this instrument, may be appropriated to the payment of the neessessary contingent expenses in examining, surveying, and selling said lands.

It is further agreed that the parties of the second part, after appropriating the five per cent. above mentioned to the purpose specified, shall apply all the residue and remainder of all sales made by them of lands hereby conveyed to the sole and exclusive purpose of the payment of all the construction bonds issued under and in conformity to the terms of this indenture. And for this purpose all such avails of sales shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be cancelled, so long as such purchases can be made at par; and whenever such bonds cannot be purchased at that rate, said parties of the second part shall advertise in two newspapers published in the city of New York, and one published in the city of London, giving notice of their readiness to redeem a certain amount of said bonds at par, specifying the amount and numbers of the bonds they propose to redeem, which publication shall be at least twelve months previous to the day when said bonds shall be redeemed. And after the time limited in such advertisement, interest shall cease to accrue on the bond or bonds thus specified, and the said parties of the second part shall

redeem the same whenever presented at the rate aforesaid, but without further interest.

This indenture further witnesseth: That the said party of the first part doth hereby covenant and agree to pay to the holders of said construction bonds, respectively, the said principal sums of money therein mentioned.

If any default shall be made in the payment of either of principal or interest on any of said bonds for sixty days after demand, at the place of payment, when the same becomes due, then the said parties of the second part may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take pos'ession of said division of railroad and all its appurtenances, and all the property conveyed by this deed.

And in case said parties of the second part shall take pos'ession of the said division of railroad, they shall have full power to operate the same in such manner as in their judgment will best secure the interests of all parties. If said default shall continue for one year from the time of such default and refusal, the principal sum of such bonds shall become due & payable. The said parties of the second part may then sell said road or property, or so much thereof as shall be necessary, at public sale; provided that at least six months' previous notice of the time &
283 place of such sale shall have been given in at least one newspaper in the city of New York and one in the city of Davenport. In case of such sale it shall be the duty of the parties of the second part to make, execute, and deliver a conveyance of the said road, and any other property thus sold, which shall convey to the purchaser all the rights and privileges of the said party of the first part in and to the property thus sold, to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

Said parties of the second part shall, after paying the expenses of the foreclosure and sale, apply the proceeds to the payment of said construction bonds and interest warrants; and, after the payment of all such bonds and expenses, the remainder of the proceeds of the sale, if any, shall be paid to the said party of the first part.

And the said company do further covenant with said trustees and their successors in said trust to make, execute, and deliver all and singular such further assurances and instruments as shall, from time to time, be necessary, and as the said trustees or their counsel shall reasonably advise or require for the better effectuating the objects and purposes of these presents, and of making them embrace at law said division of railroad, and the property and effects so expressed to be mortgaged, or intended so to be, and to be hereafter acquired for the necessary use of said division of said railroad.

In case a vacancy shall happen in the number of trustees hereinbefore mentioned as parties of the second part in this indenture, the remaining trustee shall, while said vacancy exists, have all the rights, exercise all the powers and discharge all the duties devolving on the said trustees by this instrument. But as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the remaining trustee of some proper person to fill such vacancy; which nomination shall be submitted to the board of directors of said company, and, if approved by them, the person so nominated and approved shall at once become a trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining trustee, and so on until three nominations shall have been made. But if, after three nominations, neither shall be approved by said board, said vacancy shall be

filled by a committee of three persons selected, one by said remaining trustee, one by said board of directors, and a third by the two thus selected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument; and the person regularly appointed a trustee to fill a vacancy in either of the forms above specified shall, from and after his said appointment, become vested with the same powers, rights, and interests, and charged with the duties and responsibilities as if he had been one of the original trustees, parties of the second part named in and executing this instrument.

It is further agreed by and between the parties hereto, that whenever all the construction bonds which shall have been executed and issued by the party of the first part, under and in conformity to the provisions of this indenture, shall, with the interest thereon, have been fully paid, together with all the expenses incurred by the parties of the second part, in the execution of the trust, herein and hereby confided to them, the parties of the second part, and their successors, will reconvey to the party of the first part all and singular, the railroad its premises & appurtenances, and all other property, real or personal, then in the hands of the said parties of the second part, portion of the property hereby conveyed, or the avails thereof, and not before that time sold or disposed of, in the execution of the trust hereby created.

And it is hereby mutually agreed by and between the parties
284 hereto, that the said parties of the second part, their heirs, executors, and administrators, shall not be answerable for the acts, omissions, or defaults of each other.

In case the parties of the second part shall at any time have any trust-moneys on hand, derived either from the sale of construction bonds, or the lands hereby conveyed, which will not be required to meet any immediate liabilities of the company, to which said moneys are devoted, the said moneys shall be deposited on interest, with some safe bank or trust company in the city of New York, subject to be drawn by cheques signed by such one of the trustees as they may designate, and the treasurer of the company.

All the books of the railroad company and the trustees relating to the lands and division of railroad hereby conveyed shall be mutually open to the inspection of each other.

It is hereby declared by the parties to this indenture, that by incorporating with it the above-recited act of Congress, and the acts of the general assembly of the State of Iowa, their intention is to make the provisions of said acts, so far as they are applicable, a part of this instrument, and to carry out faithfully and strictly the said provisions in all that concerns the sale & disposal of the public lands, and the construction of the division of railroad hereby conveyed to the parties of the second part.

In witness whereof the said railroad company has caused these presents to be executed in reduplicates to the number of seventeen, and to be signed by the president and treasurer, and the seal of said company to be hereto affixed, the day and year first above written.

{ L. S. M. & M. } JOHN A. DIX, *President.*
{ R. R. CO. SEAL. } A. C. FLAGG, *Treasurer.*

STATE OF NEW YORK,
New York City and County, ss:

I, Joseph C. Lawrence, a commissioner in and for the State of New York, duly appointed and commissioned by the governor of the State of Iowa to take the acknowledgment and proof of deeds and other instru-

ments of writing under seal, to be used or recorded in said State of Iowa, also a notary public in and for said State of New York, duly appointed & commissioned by the governor thereof, and dwelling in the city of New York, do hereby certify that, on the twentieth day of May, A. D. 1857, before me personally came John A. Dix, president, and A. C. Flagg, treasurer of the Mississippi and Missouri Railroad Company, to me personally known to be the persons described in, and who executed the within indenture of mortgage, and severally acknowledged that they executed the same as their free act and deed in their respective capacities as president and treasurer of the said Mississippi and Missouri Railroad Company, and the said A. C. Flagg, treasurer of the said company, being by me duly sworn, did depose and say that he knows the corporate seal of the said company, and that the seal affixed to the within indenture of mortgage, is such corporate seal, and was so affixed by order of the board of directors of said company, and by like authority he and the said John A. Dix, executed the same as the act and deed of said company.

L. S. COMMISSIONER FOR THE STATE OF IOWA IN N. Y.
L. S. NOTARY PUBLIC N. YORK.

Given under my hand & official seals the day and year above written.

JOSEPH C. LAWRENCE,
Commissioner for the State of Iowa, in & for the State of New York and Notary Public of the State of New York.

285 (Endorsed:)

STATE OF IOWA, *Scott County, ss:*

Left for record Mar. 20th, 1866, at 2½ o'clock, p. m., & recorded in book W. of mortgages, pages, 558-9-560, 1, 2, 3, 4, 5, 6, 7, 8, 9, 570, 1, 2, 3, 4, 575.

JAMES THORINGTON, *Recorder.*
JNO. WEB. COLLINS, *Dep. Rec.*

Recieved and filed for record the 9th day of June, A. D. 1857, at ten o'clock, p. m., and recorded in book 2, page 478.

THO'S HUGHES,
County Recorder, Johnson County, Iowa.

Cross-bill endorsed: Filed May 9, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, on the 9th day of May, A. D. 1866, came the Mississippi and Missouri Railroad Company, and by C. Baldwin, its solicitor, filed in said clerk's office an answer to the cross-bill of Edward W. Dunham, which answer is in the words and figures following, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Iowa, ss:

EDWARD W. DUNHAM
versus
THE MISSISSIPPI AND MISSOURI RAILROAD Company et al. } In equity.

The seperate answer of The Mississippi and Missouri Railroad Company, to the complainants' cross-bill, exhibited in this court in the case of Thomas C. Durant, and others, against the said Mississippi and Missouri Railroad Company and others.

This defendant reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in said complainants' bill contained, for answer thereto, or such parts thereof as this respondent is advised is material to be answered unto:

This respondent admits its existence as a corporation with powers to construct a railroad and branch, and to borrow money, mortgage its property to secure the repayment of the same in manner and form as stated and set out in complainants' cross-bill; admits that it has built a part of its main line, via Iowa City to Kellogg, in Jasper County, Iowa, and also a branch of the main line, via Muscatine to Washington, in Washington County, Iowa, and that it is in pos'session and operating said road and branch; and admits that it is the owner of the rolling-stock, machine-shops, machinery, and other property as alleged in said cross-bill; admits that the road was built in three divisions as stated in said cross-bill.

Further answering respondent admits that it did, on the first day of July, 1855, make, execute, and deliver the indenture of mortgage to said complainant, and that it is correctly recited in said bill, and was so executed & delivered to secure the repayment of money borrowed by respondent, for which respondent issued bonds of one thousand dollars each, bearing interest at the rate of seven per cent., payable semi-annually, and the principal due and payable on the first day of July, 1875, and that said mortgage covers the first division of said company's railroad from Davenport to Iowa City and Muscatine, and the property belonging to said division of said road.

286 Admits that the mortgage set out, in "Exhibit A" of complainants' bill is a true copy of said mortgage.

Respondent, further answering said cross-bill, admits that it issued an aggregate amount of one million of dollars in bonds of one thousand dollars each, dated the 1st of July, A. D. 1855, and that they are known as first mortgage bonds on the first division of said company's railway and appurtenances, and that said bonds are now outstanding and unpaid in the hands of divers persons.

Respondent admits that the condition of said mortgage has been broken, and that said company is in default in consequence of not having paid the interest on said bonds as stated in said cross-bill.

Admits that there is a large amount of unpaid interest due said bondholders, and respondent, by its secretary, attaches to this answer an exhibit stating the principal and past-due interest on said bonds up to the 8th of May, 1866, and designates said exhibit as "A," and makes it a part of this answer.

Respondent admits that, owing to its default in not paying the interest on said bonds, the principal has become due, and admits that said interest was demanded, and that the holders of a majority in amount of said bonds have requested and directed complainant to enforce and foreclose said mortgage.

This respondent admits that certain income bonds were issued by the Mississippi and Missouri Railroad Company for funded interest c'upons upon the said bonds, due on and prior to the first day of January, 1864, amounting to the sum of $216,000, and that there was other interest

due prior to the first of January, 1865, a full statement of which respondent discloses in said Exhibit A.

Respondent also admits that some of the holders of said past-due c'upons, under an agreement with said railroad company, so provided as to retain their lien under said mortgage, as stated and set forth in said cross-bill, and that such bondholders have elected to take back their c'upons.

And this respondent, further answering said cross-bill, says that it is true the said Mississippi and Missouri Railroad Company, on or about the first day of July, A. D. 1856, was desirous of borrowing a further sum of money by issuing a series of second-mortgage bonds to the amount of $400,000 *dollars* on its first division of said road, and that it did, on or about the said first day of July, 1856, make, execute, and deliver unto said complainants another indenture of mortgage with recitations, conditions, and covenants as stated in complainant's bill of complaint to secure the sum of four hundred thousand dollars, and interest thereon, at the rate of eight per cent. per annum, payable semi-annually on the first of July and January in each year, until the first of July, 1876, at which time the principal of said bonds fell due, and that said last-named mortgage covers the first division of said railroad, together with the rolling-stock and all property belonging to said division of said road, and that said Exhibit "B" is a true copy of the original second mortgage on said first division of said road, and the appurtenances thereunto belonging.

Respondent admits that the condition of said mortgage has been broken, and said company is in default, in that it failed to pay the interest in manner as covenanted for in said mortgage; and it admits that it has paid no interest on said bonds since the first day of January, 1865, and also admits that said interest has been demanded of the officers of said company as stated in said cross-bill, and also admits that a majority in amount of said bondholders have requested and
287 directed the said Edward W. Dunham, as trustee in said mortgage, to enforce payment of the same as stated in said cross-bill.

Respondent admits that it has been in pos'ession of said road from the commencement of its construction up to the present time, and has received the earnings and profits thereof, and admits that it has not applied all its earnings to the payment of said interest, but avers that after paying neeessary expenses, repairs, &c., the said road has not earned enough to pay the interest on the indebtedness of said company; and respondent admits that said company is insolvent. Respondent sets out, in Exhibit "B," hereto attached, the amount due & secured by said last-mentioned mortgage.

Further answering said cross-bill of complainant, this respondent admits that the said Mississippi and Missouri Railroad Company did, on or about the first day of July, A. D. 1856, make, execute, and deliver a certain other indenture of mortgage to the said complainant, as trustee, to secure the repayment of money, which respondent wished to borrow, to aid in the construction of the third or Oskaloosa division of its road from Muscatine to Oskaloosa, in Iowa, and that "Exhibit C" of said complainants' cross-bill is a true copy of the original mortgage so executed and delivered.

And this respondent admits that it did execute a large amount of bonds secured by said mortgage, and that the same are now outstanding and unpaid, and that the aggregate sum so issued is about five hundred and ninety thousand dollars, and dated the same date as said mortgage, to wit, the first day of July, A. D. 1856, and are known as

Oskaloosa division bonds of said company's railroad, and that said bonds are made payable on the first day of July, 1876, and that said bonds bear interest at the rate of seven per cent. per annum, payable semi-annually; admits that said road is only completed to Washington, in Washington County, Iowa.

Respondent admits that the conditions of said mortgage have been broken, and said company is in default, not having paid said interest when due, and demanded as alleged in said bill.

Respondent admits that there is a large amount of past-due, unpaid interest now due to said bondholders, the exact amount of which said principal and interest respondent, by its secretary, herewith shows (as near as it can) by an exhibit, marked "C," attached to this answer and made a part hereof, and hereby referred to for greater certainty.

Respondent admits the conditional funding of a portion of said c'upons, and that neither the bonds issued therefor or the interest thereon has been paid, and that the holders are entitled to the original lien of said interest c'upons, the amount of which, and the interest thereon, is set forth and stated in said Exhibit "C" hereto.

Respondent admits that, by the terms of said mortgage and bonds, the whole principal and interest is now due and payable, and that complainant is entitled to a foreclosure of said mortgage as prayed in and by said cross-bill.

Respondent admits that it has not applied all the earnings of said branch road to payment of interest on said bonds.

Respondent herewith discloses a list of lands and town lots belonging to said first division of said railroad which were purchased by said company for right of way, stone-quarry, and for ballasting said road, which property was and is necessary for the use of said road. A list and description of said lands and lots are described and set forth in Exhibit "D," and made a part of this answer.

288 Respondent also sets out in an exhibit, marked Exhibit "E," a list and description of lands belonging to the Oskaloosa division of said road, purchased by said railroad company for the construction and operating of said railroad and necessary therefor.

Respondents also exhibit a statement of equipments or rolling-stock belonging to said first division of said company's railroad, and mark it Exhibit "F," and attach the same hereto.

Respondents having fully answered said cross-bill, pray to be dismissed hence, &c.

The Mississippi and Missouri Railroad Company, by its secretary and seal.

{ M. & M. R. R. CO. SEAL. }

EBENEZER COOK,
Secretary.

C. BALDWIN,
Solicitor for M. & M. R. R. Co.

"EXHIBIT A."—*Statement of the amount due for principal and interest on the 8th day of May, 1866, on the 1st mortgage 1st division bonds of the Mississippi and Missouri Railroad Company.*

Principal		1,000,000 00
Income bonds given for interest	216,000 00	
Interest on do. from January 1, 1865, *a* 7 %.	20,496 00	
		236,496 00

Scrip issued for c'upons convertible.....	14,513 28	
Interest on do. from July 1, 1862, *a* 7 %....	3,916 79	
		18,430 25
Past-due c'upons convertible.....	2,900 93	
Int. on do. from July 1, 1862, *a* 6 %.....	671 06	
		2,571 99
Past-due c'upons of July, 1864, & January, 1865.....	5,392 50	
Int. on do. from January 1, 1865, *a* 6 %....	440 40	
		5,832 90
Int. on principal due July 1, 1865.....	35,000 00	
Int. on last am't from July 1, 1865, *a* 6 %..	1,796 55	
		36,796 55
Int. on principal due Jan. 1, 1866.....	35,000 00	
Int. on last am't from Jan'y 1, 1866, *a* 6 %..	746 55	
		35,746 55
Principal.....	$1,000,000 00	
Interest.....	335,874 24	
		1,335,874 24

"EXHIBIT B."—*Statement of the amount due for principal and interest on the eighth day of May, 1866, on the second mortgage 1st division bonds of the Mississippi and Missouri Railroad Company.*

Principal.....		400,000 00
Past-due c'upons convertible.....	840 00	
Int on do. from July 1, 1862, *a* at 6 %.....	194 25	
		1,034 25
Int. on principal due July 1, 1865, *a* 8 %.....	16,000 00	
Int. on last am't from July 1, 1865, *a* 6 %....	820 00	
		16,820 00
289 Int. on principal due Jan'y 1, 1866, *a* 8%..	16,000 00	
Int. on last am't from Jan'y 1, 1866, *a* 6%..	340 00	
		16,340 00
Principal.....	$400,000 00	
Interest.....	34,194 25	
		434,194 25

"EXHIBIT C."—*Statement of the amount due for principal and interest on the eighth day of May, 1866, on the first mortgage Oskaloosa division bonds of the Mississippi and Missouri Railroad Company.*

Principal.....		590,000 00
Income bonds given for interest.....	83,000 00	
Int. on do. from Jan'y 1st, 1865, *a* 7 %.....	2,065 45	
		85,065 45
Scrip issued for c'upons convertible.....	346 33	
Int. on do. from July 1, 1862, *a* 6 %.....	80 11	
		426 44
Past-due c'upons convertible.....	4,992 37	
Int. on do. from July 1, 1862.....	1,154 88	
		6,147 25

Past-due c'upons of July, 1864, & Jan'y, 1865	1,085 00	
Int. on do. from Jan'y 1, 1865, *a* 6 %	88 65	
		1,173 65
Int. on principal due July 1, 1865	20,650 00	
Int. on last am't from July 1, 1865, *a* 6 %	1,059 97	
		21,709 97
Int. on principal due Jan'y 1, 1866	20,650 00	
Int. on last am't from Jan'y 1, 1866, *a* 6 %	440 47	
		21,090 47
Principal	$590,000 00	
Interest	135,613 23	
		725,613 23

"EXHIBIT D."—*List of lands and city lots belonging to the first division of the Mississippi and Missouri Railroad, purchased for depot purposes, gravel pits, sand bank, stone-quarries, &c., the lands and lots being required for use in constructing and operating the railroad of said company, and which are covered by the mortgages made by the company.*

Lot 3,	block 64	Muscatine, Muscatine County, for depot purposes.
" 9,	" 67	
" 2,	" 110	
" 4 & 5,	" 7	
W. ½ of " 3,	" 7	

All that part of the east $51\frac{92}{100}$ acres of the west $110\frac{92}{100}$ acres of the N. W. ¼ sec. 10, township 78, range 2 west, which lies north of the railroad track, Muscatine County—$36\frac{38}{100}$ acres, sand bank for ballasting.

The south sixty acres of the west ½ of the S. E. ¼ section six, township seventy-eight, range two west, Muscatine County—60 acres, stone-quarry.

290 "EXHIBIT E."—*List of lands belonging to the Oskaloosa division of the Mississippi and Missouri Railroad, purchased for gravel pits, the said land being required for use in constructing and operating the said railroad of the said Mississippi and Missouri Railroad Company, and which are covered by the mortgages made by the said company.*

The N. E. ¼ and the S. W. ¼ of the S. W. ¼ of sec. 20, T. 76, R. 2 west—80 acres, Muscatine County.

All of the S. W. ¼ & the W. ½ of the S. E. ¼ of sec. 30, T. 76, range 2 west, which lies north of the railroad track—110 acres, Muscatine County.

"EXHIBIT F."—*Statement of equipments belonging & appurtenant to the 1st division Mississippi & Missouri Railroad.*

10 locomotives, to wit:

The Iowa.	The Oskaloosa	The A. C. Flagg.
The Davenport.	" Des Moines.	" Le Claire.
The Nebraska.	" Samson.	" John A. Dix.
The Muscatine.		

50 box freight cars, numbered from 2 to 100, inclusive.

10 platform cars, numbered from 1 to 19, inclusive.

6 passenger cars, numbered from 1 to 6, inclusive.
5 hand cars; 3 truck cars.
2 baggage cars, Nos. 1 & 2.
One or two of the box freight cars have been converted into caboose cars.

(Endorsed:) Filed May 9th, 1866.

WOODWARD, *Clerk.*

On the same day, to wit the ninth day of May, A. D. 1866, came The Mississippi and Missouri Railroad Company, by C. Baldwin, its solicitor, and filed in said clerk's office answer to the cross-bill of Thomas E. Walker, and Franklin Haven, which answer is in the words and figures following, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Iowa, ss:

THOMAS E. WALKER AND FRANKLIN HAVEN
versus
THE MISSISSIPPI AND MISSOURI RAILROAD Company and others. } In equity.

The seperate answer of the said Mississippi and Missouri Railroad Company to the complainant's cross-bill exhibited in this court in the case of Thomas C. Durant and others against the said Mississippi and Missouri Railroad Company and others.

This defendant, reserving all benefit and advantage of exception which may be taken to the many errors & other imperfections in said complainant's bill contained, for answer thereto, or such parts thereof as this respondent is advised is material to be answered unto, says, this respondent admits its existence as a corporation, with powers to
291 construct a railroad and branch, and to borrow money, mortgage its property to secure the repayment of the same, in manner and form as stated and set out in complainant's cross-bill, and it admits the grant of land by the United States to the State of Iowa, and by the said State of Iowa to this defendant, to aid in the construction of the main line of its road from Davenport to Council Bluffs, in the State of Iowa, and that this respondent did accept such grant, and by virtue thereof became entitled to and accepted large quantities of land.

And this respondent admits that, on or about the 8th day of May, A. D. 1857, it did issue its bonds of that date for a large amount, in order to raise money to construct and complete the said second division of its road, and to secure the repayment of said money it did make, execute and deliver unto the said Thomas E. Walker and one Curtis B. Raymond, as trustees, the indenture of mortgage set out in said bill, the contents of which are correctly set out in said bill, as well as the covenants of this respondent, and that said mortgage covers the said second division of said railroad, with all property belonging to said division, whether real or personal.

Respondent admits that said series of bonds were called or known as first mortgage construction or land-grant bonds, bearing even date with said mortgage, and that said bonds bear interest at the rate of seven per cent., payable semi-annually, and the principal due and payable on the eighth day of May, A. D. 1877.

Respondent admits that it issued the amount charged in said bill of said bonds, to wit, $3,617,000, and that said bonds are held and owned by divers persons.

Admits that, since the execution of said mortgage, and the acceptance of said trust by said Walker and Raymond, the said Curtis B. Raymond has resigned his trust and refused to act further in the premises, and that said Franklin Haven has been duly appointed a trustee as successor and in place of said Curtis B. Raymond in the manner provided for in said mortgage, and has accepted the trust.

This respondent admits the correctness of the schedule of lands filed by complainants with their bill.

Admits that the condition of said mortgage has been broken, and that said respondent is in default, and has refused and failed to pay to the said bondholders the semi-annual interest as in said bill alleged, and that the same has been demanded.

Respondent admits that there is a large amount of interest in arrear now due, the amount of which respondent fully sets out and declares in an exhibit hereto, marked "A," and which respondent makes a part of this his answer, and in and by said exhibit respondent sets out and shows the amount of c'upons conditionally funded but not cancelled.

Respondent admits that, by the terms of said mortgage, and for the reason that respondent has failed to pay said interest, the principal sums of said bonds have become due and payable, and that complainants are entitled to a foreclosure of said mortgage for principal and unpaid interest.

Respondent admits that it is now, and always has been, in pos'session of said railroad, and all property belonging to said corporation, and has received the earnings of said road.

Respondent admits that it has not applied all the earnings of said road to the payment of interest on bonds issued by this respondent, but avers that it has applied such earnings to the payment of interest, except such an amount as in the opinion of the officers of said road was
necessary for the payment of current expenses, and such repairs
292 of said road as were deemed necessary for the profit and interest of said corporation and its creditors.

Respondent admits that the accumulating int'rest increases the amount of the indebtedness, and admits that it is insolvent.

This respondent, further answering, attaches hereto an exhibit, marked "B," in which it gives a full statement of the number of locomotive engines and cars owned by and belonging to the said second division of said road, as asked for in the prayer of said bill.

Respondent, further answering, attaches hereto an exhibit, marked "C," in which it gives a list of lots in Iowa City, and a tract of land in Iowa County, for depot purposes, purchased by the company, and which were and are necessary to the operating the said railroad on the line thereof, although not now used.

This respondent, having fully answered said bill, prays, &c.

{ M. & M. R. R. CO. SEAL. } The Mississippi and Missouri Railroad Company, by its secretary and seal.

EBENEZER COOK, *Secretary.*

C. BALDWIN, *Solicitor for M. & M. R. R. Co.*

"EXHIBIT A."—*Statement of the amount due for principal and interest on the 8th day of May, 1866, on the land-grant 1st mortgage bonds of the Mississippi and Missouri Railroad Company.*

Principal		3,617,000 00
Income bonds given for interest	254,000 00	
Int. on do. from Nov. 8, 1864, *a* 7%	26,670 00	
		280,670 00
Scrip issued for c'upons convertible	13,870 85	
Int. on do. from Nov. 8, 1862, *a* 6%	2,612 87	
		16,483 72
Past-due c'upons convertible	17,309 15	
Int. on do. from Nov. 8, 1862, *a* 6%	3,635 02	
		20,944 17
Past-due c'upons of Nov. 8, 1864	35,000 00	
Int. on do. from Nov. 8, 1864, *a* 6%	2,860 00	
		37,860 00
Int. on principal due May 8, 1865	126,595 00	
Int. on last am't from May 8, 1865, *a* 6 %	7,595 70	
		134,190 70
Int. on principal due Nov. 8, 1865	126,595 00	
Int. on last am't from Nov. 8, 1865, *a* 6 %	3,797 85	
		130,392 85
Principal	$3,617,000 00	
Interest	620,541 00	
		4,237,392 85

"EXHIBIT B."—*Statement of equipments belonging and appertaining to the Des Moines or land-grant division of the Mississippi and Missouri Railroad.*

3 locomotives, to wit, the "N. B. Judd," "Iowa City," and "C. W. Durant."
3 passenger cars, Nos. 7, 8, and 9; 40 box freight cars, being all that are numbered above 100.
40 platform cars, being all numbered above 19.
2 baggage cars, Nos. 3 & 4.
20 dirt cars.
20 hand cars.
9 truck cars.

293 "EXHIBIT C."—*List of lands and city lots belonging to the Des Moines or land-grant division of the Mississippi and Missouri Railroad, purchased for depot purposes, the said lands and lots being required for use in operating the said railroad of the Mississippi and Missouri Railroad Company, and which are covered by the mortgages made by said company.*

Lots 1 & 8, block 15
" 1 & 8, " 18
" 3, " 11
" 1, " 22
} Iowa City, Johnson County.

The S. E. ¼ of the N. E. ¼, sec. 12, T. 80, R. 12 west—40 acres, Iowa County.

(Endorsed:) Filed May 9th, 1866.

WOODWARD, *Clerk.*

On this day, to wit, the tenth day of May, A. D. 1866, came the defendant Mark Howard, by his solicitor, James Grant, and filed in said clerk's office an answer to the original bill and amendment of the complainants, and to the cross-bill of Edward W. Dunham, and of Thomas E. Walker, and Franklin Haven; which answer is in the words and figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

In the circuit court of United States.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, John Webber, Mark Howard, et als. } In equity. To May term, 1866.

The seperate answer of the said Mark Howard to the original bill and amendment thereto, and also to the cross-bills of Edward W. Dunham, Franklin Haven, and Thomas E. Walker.

This respondent, reserving all benefit, &c., for answer to said several bills of complaint, now here appears by his solicitor, James Grant, and saith that defendant admits the priority of said mortgages as a lien on the property of said railroad company. Respondent says he recovered judgment in this court in October, 1865, on certain guaranties of the said railroad company; that said complainants in all the said bills are entitled to a foreclosure of their several mortgages, and a decree against this respondent as prayed in their several bills; and this respondent has no objection to a decree in favor of said complainants, reserving all rights to any other relief to which he may be entitled against his codefendant, the said railroad company.

Wherefore, &c.,

MARK HOWARD.

Solicitor, J. GRANT.

(Endorsed:) Filed May 10th, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the tenth day of May, A. D. 1866, came the defendant John Webber, by James Grant, his solicitor, and filed in said clerk's office an answer to the original bill and amendment of
294 plaintiffs, and to the cross-bill of Edward W. Dunham, and of Thomas E. Walker and Franklin Haven; which answer is in the words and figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

In the circuit court of the United States.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, John Webber, Mark Howard, et als. } In equity. To May term, 1866.

The seperate answer of the said John Webber to the original bill and amendment thereto, and also to the cross-bills of Edward W. Dunham, Franklin Haven, and Thomas E. Walker.

This respondent, reserving all benefit, &c., for answer to said several bills of complaint, now here appears by his solicitor James Grant, and saith:

That respondent admits the priority of said mortgages as a lien on the property of said railroad company.

Respondent says he recovered a judgment in this court in October, 1865, on certain guaranties of the said railroad company; that said complainants in all the said bills are entitled to a foreclosure of their several mortgages, and a decree against this respondent as prayed in their said bills; and this respondent has no objection to a decree in favor of said complainants, reserving all rights to any other relief which he may be entitled against his codefendant, the said railroad company.

Wherefore, &c.,

JOHN WEBBER,
By J. GRANT, *Sol'r.*

(Endorsed:) Filed May 10th, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the tenth day of May, A. D. 1869, came the plaintiff, by John N. Rogers, their solicitor, and filed in said clerk's office an answer to the cross-bill of Thomas E. Walker and Franklin Haven, which answer is in the words and figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

In the circuit court of the United States for said district.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas E. Walker, and Franklin Haven, et al. } In chancery.

The seperate answer of the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, to the cross-bill of the said Thomas E. Walker and Franklin Haven, exhibited in the above-entitled cause, wherein these respondents are made defendants.

These respondents, reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in the cross-bill of said Thomas E. Walker and Franklin Haven contained, for answer thereto, or such parts thereof as respondents are advised it is material for them to answer, say:

295 These respondents admit the existence of the said Mississippi & Missouri Railroad Company as a corporation, with power to construct, maintain, and use a railroad and branch, and with full power to borrow money, and to execute mortgages on said roads and other property and franchises of the said company, to secure the repayment of the same; and also that said railroads have been constructed and built as stated and set forth in said cross-bill.

And these respondents admit that, on or about the eighth day of

May, A. D. 1857, the said railroad company issued its bonds for a large amount; and that, on the said eighth day of May, A. D. 1857, the said railroad company made, executed, and delivered unto said Walker, and one Curtis B. Raymond, as trustees, an indenture of mortgage duly signed & sealed, and that the exhibit attached to said cross-bill is a true copy of such indenture of mortgage, and admit that said indenture was executed for the purposes set forth in said cross-bill.

And these respondents admit the grant of land by the United States to the State of Iowa, and by the State of Iowa to said company, as set forth in said cross-bill.

And these respondents admit that by the said indenture the said railroad company conveyed to said Walker and Raymond, in trust, and their successors, the railroad of the said company, extending from Iowa City to Council Bluffs, being part of the said company's railroad, and all the property, real and personal, and appurtenances and franchises belonging to said part or division of said company's railroad, and also all right, title, interest, claim, or demand which the said company then had or might thereafter acquire in or to all public lands of the United States granted to the State of Iowa, and by the State of Iowa to the said company, as set forth and recited in said mortgage and cross-bill, and admit the trusts and covenants in said indenture of mortgage contained and set forth in said cross-bill; and admit the acknowledgment and record of said indenture, as set forth in said cross-bill.

These respondents admit that the said railroad company did issue a large number of bonds, duly signed and sealed, and secured by the said mortgage; but these respondents are not advised further than by the statement of said cross-bill of the aggregate amount of bonds so issued; wherefore they neither admit nor deny the amount charged in said cross-bill; but these respondents believe and admit that some of such bonds were issued, in bonds of $1,000 each, dated the said eighth day of May, 1857, called or known as first mortgage construction or land-grant bonds, and secured by said mortgage, and that by said bonds the said company promised and agreed to pay to the bearers of said bonds, respectively, the sums therein expressed, on the eighth day of May, A. D. 1877, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the eighth day of November and May, ensuing the date thereof, until the principal sum should be paid; and these respondents are advised and believe, that such bonds, to a large amount, are now held and owned by divers persons, as stated in said cross-bill.

And these respondents admit the resignation of trust, by the said Raymond, and the substitution of said Franklin Haven in his stead, as set forth in said cross-bill.

And these respondents admit that, so far as they are advised, the schedule of lands filed with said cross-bill, is a correct list showing the lands owned and claimed by the said railroad company, and covered by the said mortgage.

296 These respondents having no sufficient knowledge thereof, can neither admit not deny that the conditions of the said mortgage have been broken, and that the said railroad company is in default, in that the said company has failed to pay the interest on said bonds when thereto demanded; and these respondents say that they are not advised of the amount of interest unpaid, if any; wherefore they neither admit nor deny the amount stated as due and unpaid in said cross-bill.

These respondemts admit that the entire principal and interest of

said bonds would become due by reason of such default, if such default has been made; and that the said Walker and Haven would in that case be entitled to a foreclosure of their said mortgage for the whole amount of principal & interest thereby secured, and neither admit nor deny that holders of more than one hundred thousand dollars in amount of said bonds have instructed the said Walker and Haven to foreclose their said mortgage, these respondents having no information sufficient to form a belief thereupon.

And these respondents admit that the said mortgage to the said Walker and Haven is prior to the mortgage sought to be for'closed by these respondents in their original bill of complaint on file in this cause, and superior in lien to these respondents', & said mortgage on the division of said railroad from Iowa City west, and on the public lands granted to said railroad company; but that these respondents are not advised of the amount due upon said mortgage to said Walker and Haven; and these respondents ask that their rights, and that of their cestui's que trust may be protected by decree of this honorable court.

And these respondents admit that the said Mississippi and Missouri Railroad Company is insolvent and unable to pay its just debts and liabilities.

And these respondents having now fully answered all such parts of said cross-bill as these respondents are advised it is material or neesessary for them to make answer unto, pray that they may have relief, as already prayed in their original bill of complaint, and the amendment thereunto filed in this cause; and for such other and further relief as the nature of the case may demand, and to your honors shall seem meet.

THOMAS C. DURANT,
JACOB S. WETMORE,
ROBERT B. MINTURN, JR.,
By JOHN N. ROGERS,
Their Solicitor.

(Endorsed:) Filed May 10th, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the tenth day of May, A. D. 1866, came the plaintiffs, by John N. Rogers, their solicitor, & filed in said clerk's office an answer to the cross-bill of Edward W. Dunham; which answer is in the words and figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

In the circuit court of the United States for said district. In chancery.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, et al.

297 The seperate answer of the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, to the cross-bill of the said Edward W. Dunham, exhibited in the above-entitled cause wherein these respondents are made defendants.

These respondents, reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in the

cross-bill of said Edward W. Dunham contained, for answer thereto, or such parts thereof as these respondents are advised it is material for them to answer, say:

These respondents admit that they file' their bill for foreclosure of a mortgage executed by the said railroad company, as stated in said cross-bill, & that they amended their said bill, making the said Dunham a defendant thereto.

These respondents admit the existence of the said Mississippi and Missouri Railroad Company as a corporation, with powers to construct a railroad and branch, and with full power to borrow money for the purpose of building, maintaining, and operating such railroad; and to execute mortgages to secure the payment of the money borrowed. Also, that the said railroads have been constructed and built as stated and set forth in said cross-bill.

These respondents admit that, on the first day of July, A. D. 1855, the said railroad company made, executed, and delivered unto the said Dunham an indenture of mortgage, duly signed and sealed; and that the exhibit attached to said cross-bill, and marked "A," is a true copy of such indenture of mortgage, and admit that said indenture was executed for the purposes set forth in said cross-bill.

These respondents admit that, by the said indenture, the said railroad company conveyed unto the said Dunham, in trust, the first division of said company's railroad, extending from Davenport to Iowa City, and Muscatine, (a distance of sixty-seven miles,) with all property, real and personal, and appurtenances belonging to said division, as recited in said cross-bill; and admit the trusts and covenants contained in said indenture, as set forth in said cross-bill; and admit the acceptance of trust by said Dunham, and the acknowledgment and record of said indenture, as set forth in said cross-bill.

These respondents admit that the said railroad company did issue a large number of bonds, duly signed and sealed, & secured by the said mortgage, amounting, as these respondents are advised, to the aggregate of one million dollars, in bonds of one thousand dollars each, dated the said first day of July, A. D. 1855, known as "first mortgage bonds," secured on the first division of said company's railroad and its appurtenances; and that by said bonds the said company bo'nd itself, and agreed to pay to bearers or holders thereof the sums therein expressed on the first day of July, A. D. 1875, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July in each and every year, until the maturity of said bonds.

And these respondents are advised that said bonds, to the amount aforesaid, are now held and owned by divers persons, as stated in said cross-bill.

These respondents, not being advised, can neither admit nor deny that the conditions of the said mortgage have been broken, and that the said railroad company is in default, in that the said company has failed to pay the interest on its said bonds when thereto demanded. And these respondents say that they are not advised of the amount of interest unpaid on said bonds, if any; wherefore they neither admit nor deny the amount stated as due and unpaid in said cross-bill.

298 These respondents admit that the whole prior principal and interest of said bonds would become due by reason of such default, if such default has been made, and that the said Dunham would, in that case, be entitled to a foreclosure of his said mortgage for the

entire amount of principal and interest thereby secured; and neither admit nor deny that the majority of the holders of said bonds has instructed said Dunham to foreclose his said mortgage, these respondents having no information sufficient to form a belief thereupon.

And these respondents further admit that, on the first day of July, A. D. 1856, the said railroad company made, executed, and delivered unto the said Dunham a certain other indenture of mortgage, duly signed and sealed; and that the exhibit attached to said cross-bill and marked "B," is a true copy of such indenture of mortgage, and admit that said indenture was executed for the purposes set forth in said cross-bill.

These respondents admit that by the said indenture the said railroad company again conveyed unto the said Dunham, in trust, the first division of its said railroad aforesaid, with its appurtenances, and admit the trusts and covenants contained in said indenture as set forth in said cross bill; and admit the acceptance of trust by said Dunham, and the acknowledgment and record of said indenture as set forth in said cross-bill.

These respondents admit that the said railroad company did issue a large number of bonds duly signed and sealed, and secured by the said last-mentioned mortgage, and are advised that the amount of such bonds so issued was in the aggregate the sum of four hundred thousand dollars, in bonds of one thousand dollars each, dated the said first day of July, A. D. 1856, known as "second mortgage sinking fund bonds," secured by such second mortgage on the first division of said company's railroad, and its appurtenances; and that by said bonds the said company bound itself, and agreed to pay to bearers or holders thereof the sums therein expressed on the first day of July, 1876, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first days of January and July in each and every year until the maturity of said bonds.

And these respondents are advised that said bonds to the amount aforesaid are now held and owned by divers persons as stated in said cross-bill.

These respondents, not being fully advised thereof, can neither admit nor deny that the conditions of the said mortgage have been broken, and that the said railroad company is in default, in that the said company has failed to pay the interest on said bonds when thereto demanded; and these respondents say that they are not advised of the amount of interest unpaid on said bonds, if any; wherefore they neither admit nor deny the amount stated as due and unpaid in said cross-bill.

These respondents admit that the whole principal and interest of said bonds would become due by reason of such default, if such default has been made, and that said Dunham would in that case be entitled to a foreclosure of his said mortgage for the entire amount of principal and interest thereby secured; and that respondents neither admit nor deny that the majority of the holders of said bonds have instructed said Dunham to foreclose his said mortgage, these respondents having no information sufficient to form a belief thereon.

And these respondents admit that, on the first day of July, A. D. 1856, the said railroad company made, executed, and delivered
299 unto the said Dunham a certain other indenture of mortgage duly signed and sealed, and that the exhibit attached to said cross-bill, and marked "C," is a true copy of such indenture of mort-

gage; and admit that said indenture was executed for the purposes set forth in said cross-bill.

These respondents admit that by the said indenture the said railroad company conveyed unto the said Dunham, in trust, the Oskaloosa division of said company's railroad, extending from Muscatine to Oskaloosa, with all property, real and personal, and the appurtenances belonging to said division, as recited in such mortgage and cross-bill; and admit the trusts and covenants contained in said indenture as set forth in said cross-bill; and admit the acceptance of trust by said Dunham, and the acknowledgment and record of said indenture of mortgage as set forth in said cross-bill.

These respondents admit that the said railroad company did issue a large number of bonds duly signed and sealed, and secured by said mortgage; but these respondents are not advised of the aggregate amount of the bonds so issued, wherefore they neither admit nor deny the amount charged in said cross-bill, but these respondents are advised & admit that some of such bonds were issued in bonds of $1,000 each, dated the said first day of July, A. D. 1856, known as Oskaloosa division bonds, secured on said Oskaloosa division of said company's railroad and its appurtenances; and that by said bonds the said company bound itself, and agreed to pay to bearers thereof the sums therein expressed on the first day of July, A. D. 1876, with interest therein at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each and every year until the maturing of said bonds; and these respondents are advised and believe that said bonds to a large amount are now held and owned by divers persons as stated in said cross-bill.

These repondents, not being advised, can neither admit nor deny that the conditions of the said mortgage have been broken, and that the said railroad company is in default, in that the said company has failed to pay the interest on said bonds when thereto demanded, and these respondents say that they are not advised of the amount of interest unpaid, if any; wherefore they neither admit nor deny the amount stated as due and unpaid in said cross-bill.

These respondents admit that the whole principal and interest of said bonds would become due by reason of such default, if such default has been made, and that the said Dunham would in that case be entitled to a foreclosure of his said mortgage for the entire amount and interest thereby secured, and neither admit nor deny that a majority of the holders of said bonds have instructed said Dunham to foreclose his said mortgage, these respondents having no information sufficient to form a belief thereupon.

And these respondents admit that the said mortgages to the said Dunham are prior to the mortgage sought to be foreclosed by these respondents in their original bill of complaint on file in this cause, but that they are not advised of the amount due upon them nor any of them; and these respondents now pray that their rights and those of their cestui que trust in the premises may be protected by the decree of this court.

And these respondents admit that the said Mississippi and Missouri Railroad Company is insolvent and unable to pay its just debts and liabilities.

And these respondents having now fully answered all such
300 parts of said cross-bill as these respondents are advised it is material or necessary for them to make answer unto, pray that they may have the relief as already prayed in their said original bill of complaint

and the amendment thereto, on file in this case, and such other relief as the nature of the case shall demand, and to your honors shall seem meet.

THOMAS C. DURANT,
JACOB S. WETMORE,
R. B. MINTURN, JR.,
By J. N. ROGERS,
Their Solicitor.

(Endorsed:) Filed May 10, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the tenth day of May, A. D. 1866, came the plaintiffs by John N. Rogers, their solicitor, and filed in said clerk's office a replication to the answers of The Mississippi and Missouri Railroad Company, Edward W. Dunham, Thomas E. Walker, and Franklin Haven, which replication is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa. In chancery.

THOMAS C. DURANT ET ALS.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, Franklin Haven, Thomas E. Walker, et als.

The replication of the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, j'r, to the answers of The Mississippi and Missouri Railroad Company, Edward W. Dunham, and Thomas E. Walker, & Franklin Haven, defendants.

These replicants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto and unto each of said answers severally say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers, and each of them, of the said defendants are uncertain, untrue, and insufficient to be replied unto by these replicants; without this, that any other matter or thing whatsoever in the said answers, or any of them, contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters & things these replicants are and will be ready to aver and prove, as this honorable court shall direct, and pray as in and by their said bill they have already prayed.

THOMAS C. DURANT,
JACOB S. WETMORE,
ROBERT B. MINTURN, JR.,
By JOHN N. ROGERS,
Their Solicitor.

(Endorsed:) Filed May, 10, 1866.

WOODWARD, *Clerk.*

301 On the same day, to wit, the tenth day of May, A. D. 1866, came Edward W. Dunham, by John P. Cook, his solicitor, and filed in said clerk's office a replication to the answer of The Mississippi

and Missouri Railroad Company, Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., to the cross-bill of said Edward W. Dunham; which replication is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa. In chancery.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI & MISSOURI RAILROAD Company, Edward W. Dunham, et al.

The replication of the said Edward W. Dunham to the answers of the Mississippi and Missouri Railroad Company, and Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., defendants, to the cross-bill of the said Edward W. Dunham.

This replicant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto, and to each of said answers severally, says that he will aver and prove his said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers, and each of them, of the said defendants to said cross-bill are uncertain, untrue, and insufficient to be replied unto by this replicant; without this, that any other matter or thing whatsoever in the said answers, or either of them, contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and prays as in and by his said cross-bill he has already prayed.

EDWARD W. DUNHAM.

JNO. P. COOK, *Solicitor.*

(Endorsed:) Filed May 10, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the tenth day of May, A. D. 1866, came Thomas, E. Walker and Franklin Haven, by John P. Cook, their solicitor, and filed in said clerk's office a replication to the answers of The Mississippi and Missouri Railroad Company, and Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., to the cross-bill of the said Thomas E. Walker and Franklin Haven, which replication is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa. In chancery.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas E. Walker, & Franklin Haven, et al.

The replication of the said Thomas E. Walker and Franklin
302 Haven to the answers of the said Mississippi and Missouri Railroad Company, and the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., defendants, to the cross-bill of the said Thomas E. Walker and Franklin Haven.

These repliants, saving and reserving unto themselves all and all

manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereto.and to each of said answers severally, say that they will aver and prove their said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers, and each of them, of the said defendants, to said cross-bill are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, any other matter or thing whatsoever in the said answers, or either of them, contained, material or effectual in the law to be replied unto, is true.

All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and pray as in and by his said cross-bill they have already prayed.

THOMAS E. WALKER.
FRANKLIN HAVEN.

JNO. P. COOK, *Solicitor.*

(Endorsed:) Filed May 10th, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the tenth day of May, in the May term, A. D. 1866, of said court, in the record of the proceedings thereof, in said entitled cause, is the following entry, to wit:

No. 71.

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn jr., complainants, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, and John Webber, defendants.	Original bill in equity.
EDWARD W. DUNHAM, COMPLAINANT, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD COMpany, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber, defendants.	Cross-bill.
THOMAS E. WALKER AND FRANKLIN HAVEN, complainants, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD COMpany, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, & John Webber, defendants.	Cross-bill.

And now, on this tenth day of May, 1866, come the said parties, by their respective solicitors, and the several defendants to complainants' bill having filed their answers thereto; and the several defendants
303 to the cross-bills filed by said Edward W. Dunham, and Thomas E. Walker, and Franklin Haven, having filed their answers to the said cross-bills; and the said several complainants in the original bill, and the said cross-bills having filed their respective replications to the said several answers; and it appearing by said cross-bills that the complainants therein set up and claim prior liens on the property described in the mortgage first referred to in the original bill; and that

the amount due on each of the said mortgages should be ascertained, it is now here ordered and decreed, on motion of John N. Rogers, esq., solicitor for the said Thomas C. Durant, and his coplaintiffs, and by consent of all the other parties, that the said matters and things involved in said suit be referred to Thomas F. Withrow, esq., as a special master in this case, now here appointed by this court for that purpose, and the said master shall hear the allegations and proofs of the respective parties, and report his findings to this court.

And it is further ordered that the said master ascertain and report the order of priority of the several mortgages set forth in the bill and cross-bills herein, upon the several divisions of said railroad, and other property covered thereby, and that he ascertain and report whether the conditions of said several mortgages have been broken, and what amount or amounts are now due and unpaid upon the bonds secured by the said several mortgages.

And that he also ascertain & report what locomotive engines, tenders, freight and passenger cars, & other rolling-stock, and other personal property of said company are covered by said second mortgages, and what portions thereof belong, or are appurtenant to the said several divisions of said railroad respectively, and whether the lands granted by the United States to the State of Iowa, and by said State to said railroad company are correctly described and set forth in the schedule referred to in the cross-bill of said Walker and Haven, & on file herein, and that he ascertain and report what other real estate, if any, is covered by said mortgages, or either of them, belonging to said railroad company.

On this day, to wit, the eleventh day of May, A. D. 1866, came Thomas F. Withrow, special master in chancery, and filed in said clerk's office a report; which report is in the words and figures following, to wit:

No. 61, equity. United States of America, district of Iowa, circuit court for said district. May term, 1866.

In the matter of ref'rence of the case in equity to the undersigned, Tho's F. Withrow, wherein—

THOMAS C. DURANT ET AL., TRUSTEES, ARE complainants, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD Company, Edward W. Dunham, et als., defendants.	Original bill.
EDWARD W. DUNHAM, COMPLAINANT, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD Company, Thomas C. Durant, et als., defendants.	Cross-bill.
304 THOMAS E. WALKER & FRANKLIN Haven, complainants, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, et als., def'ts.	Cross-bill.

The undersigned appointed special master in chancery, to examine

and report to this honorable court the facts in this case, and the interests of the several parties, complainants and defendants, in accordance with order of ref'rence by said court, now here makes this his report in the foregoing-entitled causes, as follows, to wit:

Report.

On the tenth day of May, 1866, I notified the solicitors of the several parties that I was ready to hear the allegations and proofs of the parties, & thereupon appeared before me the said Thomas C. Durant and his coplaintiff, by John N. Rogers, esq., their solicitor, and the said railroad company, by C. Baldwin, esq., its solicitor, as defendants, to the original bill and amendment thereto, John P. Cook having appeared for the railroad company to the original bill, before the amendment thereto; and Mark Howard and John Webber, by their solicitor, James Grant, esq.; and Edward W. Dunham, Thomas E. Walker, and Franklin Haven, def'ts, in the amended original bill, and complainants in their cross-bill, by John P. Cook, their solicitor.

Thereupon said Thomas C. Durant and his coplaintiffs introduced a certified copy of their mortgage upon and covering all three divisions of the said railroad, and the said Dunham and Walker and Haven, mortgage's, introduced the originals of their said several mortgages, duly executed, acknowledged, and recorded.

Ebenezer Cook, secretary of the said Mississippi and Missouri Railroad Company, was then introduced by said complainants as a witness in the case, who was duly sworn and examined by me, and his testimony reduced to writing by inter'ogatories propounded by me and the answers thereto, which testimony I herewith report by attaching the same to this my report.

From the testimony, exhibits, and in this case I find, as matters of fact—

First. That there is due up to this date, upon the first mortgage, executed to the said Edward W. Dunham, on the first division of said railroad, from Davenport to Iowa City and Muscatine, for principal of the bonds issued—

For past-due unpaid	1,000,000 00
Interest up to this day	336,643 50
	$1,336,643 50

And I also find that said mortgage is a first lien on the said road-bed, rolling-stock, materials, fuel, machinery, machine-shops, depots, office furniture, gravel pits, stone quarries, and all other property now belonging to said division of said railroad and appurtenant thereto, as shown by the answer of said railroad company.

That of the rolling-stock belonging to said company, I find that there are ten locomotives, to wit:

The Iowa.	The The Des Moines.
" Davenport.	" Samson.
" Nebraska.	" A. C. Flagg.
" Muscatine.	" Le Claire.
" Oskaloosa.	" John A. Dix.

305 50 box freight cars, numbered from 2 to 100, inclusive.
10 platform cars, numbered from 1 to 10 inclusive.
6 passenger cars, numbered from 1 to 6 inclusive.
5 hand cars, 3 truck cars, and 2 baggage cars, Nos. 1 & 2, belong to the said first division of said railroad, as designated in Exhibit "F," of

the answer of railroad company to cross-bill of said Edward W. Dunham.

Second. That there is due up to this date upon the second mortgage, executed by said company to the said Edward W. Dunham on the said first division of said railroad, and the property, and appurtenances thereunto belonging (being the same property described and covered by the first mortgage as aforesaid) for the principal sum for the bonds issued by said company—

Amounts to	$400,000 00
For past-due & unpaid interest up to this day	34,478 00
	$434,478 00

Third. I also find that there is due to the bondholders secured by the first mortgage on the second division of said railroad from Iowa City west to Council Bluffs for principal and interest the following sums, to wit:

For principal	$3,617,000 00
For past-dues unpaid interest to date	622,982 71
	$4,239,982 71

And I also find that said last-named mortgage is a first lien on the said road-bed, rolling-stock, material, fuel, machinery, machine-shops, depots, office furniture, gravel pits, stone quarries, and all other property, real and personal, now belonging to said division of said railroad and appurtenant thereto, and set out in exhibit to answer to railroad company.

And I also find that the lands granted by the Congress of the United States to the State of Iowa, and by the State of Iowa to the said Mississippi and Missouri Railroad Company, to aid in the construction of said railroad, are included in said last-named mortgage, and that said mortgage is a first lien on said lands, and that the list of lands set out in the schedule filed in this court is correct.

I also find that of the rolling-stock belonging to said railroad company, there are three locomotives, to wit, the "N. B. Judd," "Iowa City," & "C. W. Durant;" 3 passenger cars, Nos. 7, 8, & 9; 40 box freight cars, being all that are numbered above 100; 40 platform cars, being all that are numbered above 19.

2 baggage cars, Nos. 3 & 4.

20 dirt cars, 20 hand cars, 9 truck cars, belonging to the said second division of said railroad, as designated in the schedule or exhibit marked "B" in the answer of the railroad company to the cross-bill of the said Haven and Walker, complainants herein.

Fourth. I also find that there is due to the bondholders of bonds secured by the said mortgage on the Oskaloosa division of said railroad from Muscatine to Oskaloosa, which mortgage was executed & delivered to said Edward W. Dunham as trustee, the following amounts for principal and interest, to wit:

For principal of the bonds issued	$590,000 00
For past-due unpaid interest	136,032 00
	$726,032 00

306 And I also find that said mortgage last aforesaid named is a first lien on the said road-bed, rolling-stock, material, fuel, machinery,

machine-shops, depots, office furniture, gravel-pits, stone-quarries, and all other property now belonging to said Oskaloosa division of said railroad and appurtenant thereto, particularly set out in exhibit to answer to Mississippi and Missouri Railroad Company to the bill of complainants. I find that none of the rolling-stock of said railroad belongs to said Oskaloosa division.

And I further find that the mortgage of 10th day of December, 1861, executed to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr. on the three divisions, and whole of said railroad and its property, including the lands granted by the United States to the State of Iowa, and by the said State of Iowa to the Mississippi and Missouri Railroad Company, defendants herein, is junior and subject to all the other mortgages hereinbefore recited.

I also find that there is due to the bondholders, for bonds secured by said mortgage on the whole road, so executed by said railroad company to said Thomas C. Durant and others, for principal and interest, the following sums, to wit:

For principal of bonds issued	$692,000 00
For past due and unpaid interest on said bonds	53,409 02
	$745,409 02

I also find that the judgments of Mark Howard and John Webber were rendered in this court subsequent to the execution and recording of all the aforesaid mentioned mortgages, to wit, at the October term, A. D. 1865.

And I further find that the said Mississippi and Missouri Railroad Company is in default, and that the conditions and covenants in all of said mortgages have been broken; that the said company have failed to pay the interest on said bonds so secured by said mortgages, as alleged in complainants' bill of complaint, and the payment of the said interest was demanded by the several bondholders, at the place of payment designated in said mortgages, and also of the said railroad company, and that by the said default, the whole principal sum and accrued interest, secured by said mortgages has become due and payable, and that all of said complainants are entitttled to a decree of foreclosure, and an order for the sale of the said railroad, its property and appurtenances, franchises and lands, and everything belonging to said railroad company, included in and covered by said mortgages; and I further find that said railroad company is insolvent. I also find that Curtiss B. Raymond, named as trustee and mortgagee in the said first mortgage on the second division of said railroad, resigned and declined further to execute his trusts, and that the said Franklin Haven was thereupon appointed as the successor of said Raymond in the manner provided by said mortgage.

I herewith file with the clerk of this court the said original mortgage, produced before me in this case, to be filed among the records of this case.

THO. F. WITHROW,
Special Master in Chancery.

Testimony of Ebenezer Cook, a witness produced by said complainants, who, being first duly sworn, in reply to interrogatories, saith as follows:

307 No. 1. What is your name, age, occupation, and residence?

Ans. No. 1. Ebenezer Cook; fifty-six; secretary of the Mississippi & Missouri Railroad; & residence, Davenport, Iowa.

No. 2. State what amount is due to the bondholders for bonds secured by the complainants' mortgage, and also what amount is due upon the mortgages set out in the cross-bills of Edward W. Dunham and Thomas E. Walker and Franklin Haven.

Answer No. 2. The amount of principal due upon each of said mortgages, is as stated in the exhibit attached to the sworn answers of the Mississippi and Missouri Railroad Company, and I have computed the interest thereon up to the eighth day of May, 1866, and said exhibits show in detail the interest due and unpaid thereon, the summary of which is as follows:

2d mortgages construction, Durant, Wetmore, and Minturn, trustees:	
Principal	$692,000 00
Interest	52,978 88
Total	$744,978 88
1st mortgage 1st division, E. W. Dunham, trustee:	
Principal	1,000,000 00
Interest	335,874 24
Total	$1,335,874 24
2nd mortgages 1st division, E. W. Dunham, trustee:	
Principal	$400,000 00
Interest	34,194 25
Total	$434,194 25
Oskaloosa division, E. W. Dunham, trustee:	
Principal	$590,000 00
Interest	135,613 23
Total	$725,613 23
Land grant mortgages, Thomas E. Walker and Franklin Haven, trustees:	
Principal	$3,617,000 00
Interest	620,541 44
	$4,237,541 44

No. 3. What do you know, if anything, about the holders of those bonds, secured by said mortgages, having demanded the interest due thereon?

Answer No. 3. I know the various holders of the different classes of bonds secured by the several mortgages presented c'upons, due July 1st, 1865, May 8th, 1865, November 8th, 1865, & January 1st, 1866, for interest on the bonds due on those days, at the bank, where payable at the office of the company, and that payment was refused, and I know *that* from the books of the company, that none of the interest due on any of the above-mentioned days has been paid.

308 No. 4. State, if you please, what property belongs to each division of said road, including rolling-stock, material on hand, fuel, and all other personal property belonging to each division of said roads.

Ans. No. 4. Attached to the several answers of the Mississippi and Missouri Railroad Company to the bill and cross-bill are full and complete statements of the rolling-stock belonging to the first and to the land-grant division, (there being none belonging to the Oskaloosa division,) and also statements showing the lands, lots, and so forth, belonging to each division, which statements were prepared by me from the books of the company, and which are correct, according to my best knowledge and belief. There is also a quantity of material on hand at the shops of the company and at various places on the line of the road, such as iron, ties, timber, tools, car-wheels, axletrees, patterns, points, steel, cast-iron, &c., &c., which have been purchased & paid for with the earnings of the road, for repairs of track, bridges, buildings, locomotives, cars, &c., &c., a particular inventory of which I have not now got, & which is constantly changing by the use of some and purchase of others. There is also a large amount of fuel on hand, purchased and paid for with the earnings of the road, procured for operating the railroad of said company, which is upon the line of the road at various points on each division of said railroad, and, as I believe, in about such proportions upon each division as would properly belong to each. There is also office furniture in the various depots and stations on the line, suitable for, and neeessary and proper for operating the road, and also scale and other implements, at various stations, required for use in operating and belonging to the divisions upon which it is situated.

No. 5. Do you know anything of the declination of Curtis B. Raymond as trustee in the land-grant mortgage, and the appointment of Franklin Haven in his stead? If yea, state fully.

Answer No. 5. Mr. Raymond told me he had declined to serve as trustee, and Mr. Walker told me he had nominated Franklin Haven in his stead, and I attach hereto a certified extract from the records of the said railroad company, which shows the appointment of said Haven as trustee.

No. six. What lands, if any, are owned or claimed by the said company, and covered by what is known as the land-grant mortgage, other than that about which you have already testified?

Ans. No. six. The Government of the United States granted to the State of Iowa, and said State granted to said company, certain lands to aid in the construction of their railroad, and the company by said land-grant mortgage conveyed said lands to Thomas E. Walker and Curtis B. Raymond, as trustees, to secure the payment of the bonds to be issued under said mortgage. There is filed with the cross-bill of Walker and Haven a book containing a particular description of each tract of land, which descriptions have been carefully prepared with the certified lists from the General Land Office of the United States, and as I believe are correct.

No. 7. State whether or no the Mississippi and Missouri Railroad Company is insolvent.

Ans. No. 7. The property of the company, at a fair valuation, will not pay its liabilities.

EBENEZER COOK.

Subscribed and sworn to by Ebenezer Cook, before me, at Des Moines, this eleventh day of May, A. D. 1866.

THO. F. WITHROW,
Special Master in Chancery.

309 NEW YORK, *September 16th*, 1859.

"At a meeting of the executive committee of the Mississippi and Missouri Railroad Company, held at their office this day:

"Present, John A. Dix, William Walcott, F. H. Tows.

"Whereas Curtis B. Raymond, of Boston, having declined to serve as a trustee under the provisions of the mortgage executed by this company on the 8th May, 1857, and whereas Thomas E. Walker, the remaining trustee, having, agreeable to the provisions of said instrument, nominated Franklin Haven, of Boston, to fill the vacancy:

"Therefore, resolved, that the nomination of Franklin Haven, of Boston, as such trustee, be approved."

I hereby certify that the foregoing is a true copy from the record of the M. & M. Railroad Company.

{ M. & M. R. R. CO. SEAL. } Witness my hand and the seal of the company hereto.

EBENEZER COOK,
Secretary M. & M. R. R. Co.

(Endorsed:) Filed May 11, 1866.

WOODWARD, *Clerk.*

On this day, to wit, the fifteenth day of May, A. D. 1866, came the complainants in said several cross-bills, and filed in said clerk's office a motion to confirm the master's report herein, which report is in the words and figures following, to wit:

THE STATE & DISTRICT OF IOWA, *ss:*

Circuit court of the United States for said district. May term, 1867. Des Moines.

THOMAS C. DURANT ET ALS.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et als. } In equity.

Motion to confirm master's report.

And now comes the parties, complainants in this cause, by John P. Cook, their solicitor, and moves the court to confirm the report made by Thomas F. Withrow, esq., special master in this case, and that a decree be entered accordingly.

JNO P. COOK,
Solicitor for Complainants.

(Endorsed:) Filed May 15, 1867.

WOODWARD, *Clerk.*

On this day, to wit, the eleventh day of May, in the May term, A. D. 1866, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

(The decree here entered is set out, commencing at folio 550 of this transcript, with the exception of Schedule A, appended thereto, containing a description of the lands sold, fully, completely, and correctly.)

On this day, to wit, the sixth day of August, A. D. 1866, came Thomas

F. Withrow, special master in chancery, and filed in said clerk's office a report of sale, which report is in the words and figures following, to wit:

310 IN THE CIRCUIT COURT OF THE UNITED STATES,
In & for the District of Iowa, ss:

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr., complainants, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD COMpany, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, and John Webber, defendants.	Original bill in equity for foreclosure of mortgage.
EDWARD W. DUNHAM, COMPLAINANT, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, & John Webber, defendants.	Cross-bill.
THOMAS E. WALKER AND FRANKLIN HAVEN, complainants, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber defendants.	Cross-bill.

Master's report of sale.

To the circuit court of the United States in and for the district of Iowa:

In pursuance and by virtue of a decretal order of this court, made in the above-entitled causes by said circuit court, and bearing date the eleventh day of May, in the year of our Lord eighteen hundred and sixty-six, wherein it was, among other things, ordered, adjudged, and decreed that in default of the payment of the money found due by the said decree within the time therein specified, all and singular the mortgaged premises mentioned in the original and cross-bills of complaint in this cause and hereinafter described, be sold at public auction by and under the direction of Thomas F. Withrow, a special master in chancery duly appointed for such purpose; that the sale be made at the court-house in the city of Davenport, in the State of Iowa; that said special master give time and notice of the time and place of such sale by advertisement thereof for four successive weeks preceding the day of sale in three newspapers published respectively in the cities of Davenport, Des Moines, and Council Bluffs, in said State; that the said special master execute a deed to the purchasers of the said mortgaged premises; that the said special master make payment to the several mortgagees & plaintiffs, according to their respective rights and interest as established by said decretal order:

I, Thomas F. Withrow, special master in chancery, charged with the execution of said decretal order, do respectfully certify and report—

That default having been made in the payment of the said several

sums of money specified in the decree, I advertised said premises to be sold by me at the court-house in the city of Davenport, county of Scott, and State of Iowa, on the 9th day of July, A. D. 1866, at the hour of ten o'clock a. m., that a notice of such sale was publicly adver-
311 tised for four successive weeks in three newspapers; one published in the city of Davenport, one in the city of Des Moines, and one in the city of Council Bluffs, all in the State of Iowa; that in the paper in which said notice was published at Des Moines, to wit, "The State Register," a full and complete schedule or list of lands intended to be sold was published and advertised, a copy of which said advertisement is herewith filed, and proofs of the publication of all of said notices are also herewith filed. And I further report that, on said ninth day of July, A. D. 1866, the day on which said premises were advertised to be sold as aforesaid, I attended at the time and place fixed for said sale as aforesaid, and exposed said mortgaged premises for sale at public auction, as follows: I first offered for sale to the highest bidder at public auction the first division of said railroad, and its appurtenances, described as follows, to wit: The said railroad, together with all and singular the railway, land procured or occupied for right of way, bridges, fences, privileḍges, rights, and real estate owned by said company between the city of Davenport and the cities of Iowa City and Muscatine, and all the tolls, issues, incomes, and profits, and all the lands used and occupied for depots or stations, with all the buildings standing thereon or procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, & machinery procured for or connected with the division of sixty-seven miles of road before described and in any way belonging or appertaining to the said sixty-seven miles of road, including all the property of the Mississippi and Missouri Railroad Company on said division, real & personal, and all the rights, credits, and franchises of the company in said division of railroad.

The following is the list or schedule of the lands and lots belonging to or appertaining to the said first division of railroad, which I offered for sale with said division of road as appurtenant thereto: Lot No. three, (3,) in block No. sixty-four, (64;) lot No. nine, (9,) in block No. sixty-seven, (67;) lot No. two, (2,) in block No. one hundred & ten, (110;) lots Nos. four (4) & five, (5,) in block No. seven, (7,) and the west half of lot number three, in block number seven, all in the city of Muscatine, county of Muscatine, and State of Iowa; also, all that part of the east fifty-one and $\frac{92}{100}$ ($51\frac{92}{100}$) acres of the west one hundred and ten and $\frac{92}{100}$ ($110\frac{92}{100}$) acres of the northwest quarter of section ten, (10,) township seventy-eight, (78,) range two (2) west, which lies north of the tract of said railroad, in Muscatine County, containing thirty-six and $\frac{38}{100}$ ($36\frac{38}{100}$) acres; also, the south sixty (60) acres of the west half of the southeast quarter of section six, (6,) township seventy-eight, (78,) range two (2) west, containing sixty (60) acres, in Muscatine County, State of Iowa. The following is a list or schedule of the engines, cars, and rolling-stock appurtenant to said first division, and which I offered for sale with the same, to wit:

Ten locomotive engines, with their tenders, being known and designated by the following names, to wit:

The Iowa, the Davenport, the Nebraska, the Muscatine, the Oskaloosa, the Des Moines, the Samson, the A. C. Flagg, the John A. Dix, and the Antoine Le Claire.

Fifty box freight cars, numbered from two (2) to one hundred, (100,) even numbers inclusive.

Ten platform cars, numbered from one (1) to nineteen, (19,) odd numbers, inclusive.

Six (6) passenger cars, numbered from one (1) to six, (6,) inclusive.

Five (5) hand cars.

Three (3) truck cars.

312 Two (2) baggage cars, numbered one (1) and two (2.)

And the said first division of said railroad, with its appurtenances were then and there struck off and sold to The Chicago, Rock Island and Pacific Railroad Company at and for the sum of one million dollars, ($1,000,000 00,) the said railroad company being the highest bidders therefor, and the said sum being the highest sum bid for the said first division and appurtenances.

I then, at the same time and place, offered for sale, at public auction, the portion of the said Mississippi and Missouri Railroad, known as the Oskaloosa division of said road, with its appurtenances, described as follows, to wit: The railroad of said Mississippi and Missouri Railroad Company, constructed and to be constructed, together with all and singular the railways, land used and occupied for right of way, together with all bridges, fences, privile*d*ges, and rights owned by said company, between the city of Muscatine and the city of Oskaloosa, and all the tolls, incomes, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon or procured therefor, together with all the locomotive engines and tenders, passenger cars & freight cars, shops, tools, and machinery procured for or connected with the said division of ninety-five miles of road, being that extending from the city of Muscatine to the city of Oskaloosa, and in any way belonging or appertaining to the said ninety-five miles of road now constructed, and to be constructed, including all the right, property, credits, & franchises of said company in said division of railroad.

The following is a list or schedule of the lands belonging to or appertaining to the said Oskaloosa division of said railroad, which I offered for sale, together with said division of road as appurtenant thereto, to wit, the northeast quarter and the southwest quarter of the southwest quarter of section twenty, (20,) township seventy-six, (76,) range two (2) west, situated in Muscatine County, and containing eighty (80) acres.

Also all of the southwest quarter, and the west half of the southeast quarter of section thirty, (30,) township seventy-six, (76,) range two (2) west, which lies north of the track of said railroad, situated in Muscatine County, and containing one hundred and ten (110) acres.

And the said Oskaloosa division of said railroad, with its appurtenances, was then and there sold and struck off to The Chicago, Rock Island and Pacific Railroad Company, at and for the sum of three hundred thousand dollars, the said railroad company being the highest bidder therefor, and that being the highest sum bid for said division of road, with its appurtenances, as aforesaid.

I then, at the same time and place, offered for sale at public auction, the lands described and referred to in Schedule A, in said decree, and I offered, first, said lands for sale in seperate parcels, as described in said schedule; and at such sale the west half of the northeast quarter, and the east half of the northwest quarter of section thirty-one, (31,) in township eighty, (80,) range twenty-two (22) west, situated in Polk County, were sold and struck off to The Chicago, Rock Island and Pacific Railroad Company, at and for the sum of four hundred and eighty dollars, ($480,) the said company being the highest bidder therefor, and said sum being the highest sum bid for said land.

I further report that, on said lands, for sale in seperate parcels, I received no bid, and no bid was offered for any tract, except the one last above described and sold, as aforesaid.

I then offered for sale at public auction, at the same time and
313 place, all the remaining lands en masse, and also all the right, title, interest, claim, or demand which said railroad company had at the date of said mortgage, or has since acquired in or to all public lands of the United States granted by the act of Congress, approved May 15, 1856, and set forth in said mortgage to the State of Iowa, and by the general assembly of said State by the act thereof recited in said mortgage, approved July 14th, 1856, granted to the said Mississippi & Missouri Railroad Company, and at such sale the whole of said lands, with the exception of the tract described aforesaid, was fairly struck off and sold to The Chicago, Rock Island and Pacific Railroad Company, at and for the sum of one hundred and ninety-nine thousand five hundred and twenty dollars, ($199,520,) the said company being the highest bidder therefor, and said sum being the highest sum bid for said lands.

I then at the same time and place offered for sale at public auction the western division of the Mississippi and Missouri Railroad extending westwardly from Iowa City to Council Bluffs, together with its franchises and appurtenances, and more particularly described as follows, to wit:

All and singular the railway stations, depot lands, and other lands appurtenant to said railroad, owned by the said Mississippi and Missouri Railroad Company at the date of said mortgage to said Thomas E. Walker & another, as trustees, or thereafter acquired, *consisting* or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri River, together with all the locomotives, cars, buildings, machinery, tools, and implements whatever appurtenant to the above-described division of said railroad, and all the franchises, rights, and privile*d*ges appurtenant to said division.

The following is a list or schedule of the locomotives and cars belonging or appurtenant to said division of said railroad which I offered for sale, together therewith as appurtenant thereto:

Three locomotives, with their tenders, to wit: Those known and designated as the "N. B. Judd," "Iowa City," and "C. W. Durant."

Three (3) passenger cars, numbers seven, (7,) eight, (8,) and nine, (9.)

40 (forty) box freight cars, being all that are numbered above (100) one hundred.

40 (forty) platform cars, being all that are numbered above nineteen (19.)

Two (2) baggage cars, numbers (3) three & four (4.)

20 (twenty) dirt cars.

20 (twenty) hand cars.

9 (nine) truck cars.

The following is a list or schedule of lands and lots belonging or appertaining to said division of said railroad, and which I offered for sale, together therewith as appurtenant thereto, in addition to said land grant:

Lots one (1) and eight (8) in block fifteen (15.)

Lots one (1) and eight (8) in block eighteen (18.)

Lot three (3) in block eleven (11.)

Lot one (1) in block twenty-two (22.)

All in Iowa City, Johnson County, also the southeast quarter of the

northeast quarter of section twelve, (12,) township eighty, (80,) rang' twelve (12) west, in Iowa County.

And the said division from Iowa City westward, with its appurtenances as aforesaid, was then and there struck off and sold to The Chicago, Rock Island & Pacific Railroad Company at and for the
314 sum of six hundred thousand dollars, ($600,000,) the said company being the highest bidder therefor, and the said sum being the highest sum bid for said division and its appurtenances.

I further certify and report that I have prepared and executed, and have ready for delivery, a deed to the purchaser of the said property as sold by me, as detailed in this report, and now bring said deed into court for approval.

I further report that I am advised and requested to report by the parties in interest that there are some errors and omissions in the descriptions of the lands as published, and for the purpose of correcting said errors and omissions the further action of this court is desired.

I further certify and report that I called upon the superintendant of the Mississippi and Missouri Railroad Company, and requested him to report and pay over to me the net income and earnings of the said road from the eleventh day of May, 1866, to the ninth day of July, 1866.

The said superintendant furnished me with a written report which is hereto annexed, by which it appears that all the income and earnings of said railroad, within the time specified, were used in the operation and necessary repairs of the road, its track, bridges, machinery, and rolling-stock.

And I further report that it will be necessary to further continue this cause for a final report of the distribution of the purchase-money, and for the correction of such errors as may be found in the description of said lands and real estate so sold by me.

All which is respectfully submitted this sixth day of August A. D. 1866, now here in open court.

THO. F. WITHROW,
Special Master in Chancery, Circuit Court United States.

To THOMAS F. WITHROW, Esq., *Special Master in Chancery, &c.*

SIR: In reply to your request that I, as the proper officer of the M. & M. R. R. Company, should report to you the nett earnings of the railroad of that company from the eleventh day of May, 1866, to the ninth day of July, 1866, and to account for and pay over to you such nett earnings, I have to report that during the time named the entire earnings of the road have been used in operating expenses and such necessary repairs of the road-bed, bridges, engines, cars, &c., as in my opinion, as superintendant, were required to render the road & machinery safe for the transportation of persons & property, & therefore there are no nett earnings or income to be paid over to you.

Davenport, July 12, 1866.

I am respectfully.

A. KIMBALL.
Superintendant.

(Endorsed:) Filed August 6, 1866.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the fifteenth day of May, A. D. 1867, came Thomas F. Withrow, special master in chancery, and filed in said clerk's office a supplemental report, which report is in the words and figures following, to wit:

315 In the circuit court of the United States in and for the district of Iowa.

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr., complainants, *ag't* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard & John Webber, defendants.	Original bill in equity for foreclosure of mortgage.
EDWARD W. DUNHAM, COMPLAINANT, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, junior, Mark Howard, & John Webber, defendants.	Cross-bill.
THOMAS E. WALKER AND FRANKLIN HAVEN, complainants, *ag't* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber, defendants.	Cross-bill.

Supplemental report of master.

To the circuit court of the United States in and for the district of Iowa:

I, Thomas F. Withrow, special master in chancery in the above entitled cases, beg leave to report—

That there'fore, to wit, at the August term or rule day of said court, for the year 1866, held at Des Moines, in the State of Iowa, I made and submitted my report of the sale of the said Mississippi and Missouri Railroad, with all its appurtenances and personal property, together with all the lands granted to the same, which said report was duly approved by the said court then in session, and to which said report for the matters and things therein stated ref'rence is made.

I further report, that, in pursuance of the decree made in said case, and of the sale aforesaid, the said Chicago, Rock Island and Pacific Railroad Company, the purchaser of all said property so sold, has paid to me the whole of the consideration-money for said sale and purchase, to wit, the sum of two million and one hundred thousand dollars; and that I have paid and distributed said money, as directed and specified in the decree entered in the case, as follows, to wit:

1st. I paid to the respective parties entitled thereto the sum of eighteen thousand and fifty-nine dollars and seventy cents ($18,059 70,) being the total amount of the costs of suit, costs of sale, fees of trustees and master, and counsel fees, which said sum was apportioned and charged to the several divisions and trusts pro rata, in proportion to the amounts realized by the sale of each division, a detailed statement whereof is annexed to this report and made part hereof.

2nd. I paid to Edward W. Dunham, the first mortgage' on the first division of the said railroad, the sum of nine hundred and ninety-three thousand one hondred and ninety-five dollars and two cents,

316 ($993,195 02,) that sum being the full amount of the purchase-money for said division and its appurtenances, less the pro rata share of costs and expenses charged and apportioned to said division.

3rd. I paid to Edward W. Dunham, the first mortgagee on the Oskaloosa division of the said railroad, the sum of two hundred and ninety-seven thousand nine hundred and fifty-eight dollars and fifty cents, ($297,958 50,) that being the full amount of the purchase-money for said division and its appurtenances, less the pro rata share of costs and expenses charged & apportioned to said division.

4th. I paid to Thomas E. Walker and Franklin Haven, the first mortgage's on the second or western division of said railroad, the sum of seven hundred and ninety thousand seven hundred and eighty-six dollars and seventy-eight cents, ($790,768 78,) that being the full amount of the proceeds of sale of the second or western division of said railroad with the appurtenances, and of the lands, less the pro rata share of the costs and expenses charged and apportioned to said division.

And I herewith file the receipts of the respective parties for the sums so paid out and distributed by me, and attach said reports hereto.

I further certify and report that, upon the receipt of the purchase-money from the purchaser, I made, executed, & delivered to The Chicago, Rock Island and Pacific Railroad Company a deed of all the property so sold, as in the original report particularly specified, which said deed, both as to form and substance, was heretofore approved by this honorable court, and a record thereof made.

I further report as heretofore in the original report of sale, that I am advised and requested by the parties in interest to report that there are errors & omissions in the description of the lands as published, and for the purpose of correcting said errors and ommissions, the further action of this court is desired, and for such purpose it is prayed that the said cause may remain on the docket.

All of which is respectfully submitted in open court, and the approval of the court requested.

October 23, 1866.

THO. F. WITHROW,
Special Master in Chancery.

Expenses of foreclosure.

Cook & Drury's bill and fee-bill	$7,559 70	
John N. Rodger's "	750 00	
Special master's fees & expenses	650 00	
Revenue stamps on deed	2,100 00	
		$11,059 70
Trustees' charges on first and Oskaloosa divisions:		
E. W. Dunham's charge	$2,000 00	
On second or western division and land grant:		
T. E. Walker's charge	$2,500	
F. Haven's	2,500	
	5,000 00	
		$7,000 00
Total		$18,059 70

317 The road was sold as follows:

First division		$1,000,000 00	
Oskaloosa "		300,000 00	
Western "	600,000		
Land grant	200,000		
		800,000 00	
			$2,100,000 00

Apportionment of expenses.

First division, E. W. Dunham, trustee:

Share of foreclosure expenses, $\frac{19}{21}$ of $11,059 70	$5,266 52
Share of trustee's fees, $\frac{19}{13}$ of $2,000	1,538 46
	$6,804 98

Oskaloosa division, E. W. Dunham, trustee:

Share of foreclosure expenses, $\frac{3}{21}$ of $11,059 70	$1,579 96
Share of trustee's fees, $\frac{3}{13}$ of $2,000	461 54
	$2,041 50

Western division & land grant, Walker & Haven, trustees:

Share of foreclosure expenses, $\frac{8}{21}$ of $11,059 70	$4,213 22
Trustees' fees, two trustees, $2,500 each	5,000 00
	$9,213 22

First division	$6,804 98	
Oskaloosa "	2,041 50	
Second division & land grant	9,213 22	
		$18,059 70

Amounts due bondholders.

First mortgage on first division, E. W. Dunham, trustee:

First division sold for	$1,000,000 00
Deduct costs, expenses, & fees, as per statement	6,804 98
	$993,195 02

First mortgage on Oskaloosa division, E. W. Dunham, trustee:

Oskaloosa division sold for	$300,000 00
Deduct costs, expenses, & fees, as per statement	2,041 50
	$297,958 50

First mortgage on second or western division and land grant, Walker and Haven, trustees:

Western division sold for.....	$600,000 00
Land grant " "	200,000 00
	$800,000 00
Deduct costs, expenses, & fees, as per statement.....	9,213 22
	$790,786 78

318 Recieved of Thomas F. Withrow, special master in chancery of the United States circuit court in and for the State of Iowa, appointed by said court in the case of Thomas E. Walker and Franklin Haven, trustees, etc., versus The Mississippi and Missouri Railroad Company and others, in the matter of the decree entered in said case at the May term, 1866, of the said court, the sum of two thousand five hundred ($2,500) dollars, in full for my services as trustee in the mortgage made to me and Thomas E. Walker on said railroad and its land grant, and foreclosed in said case, and wherein the property mortgaged was sold on the 9th day of July, A. D. 1866.

$2,500. FRANKLIN HAVEN.

[U. S. revenue stamp of 2c. affixed & cancelled.]

NEW YORK, *Sept.* 21, 1866.

Recieved of Thomas F. Withrow, special master in chancery of the United States circuit court, in and for the State of Iowa, appointed by said court in the case of Thomas E. Walker and Franklin Haven, trustees, etc., versus The Mississippi and Missouri Railroad Company and others, in the matter of the decree entered in said case at the May term, 1866, of said court, the sum of two thousand five hundred ($2,500) dollars, in full for my services as trustee in the mortgage made to me on said railroad and its land grant, and foreclosed in said case; and wherein the property mortgaged was sold on the 9th day of July, A. D. 1866.

$2,500. THOMAS E. WALKER, *Trustee.*

[Two-cents U. S. revenue affixed & cancelled.]

NEW YORK, *August* 4, 1866.

Recieved of Thomas F. Withrow, special master in chancery of the United States circuit court in and for the State of Iowa, appointed by said court, in the case of Edward W. Dunham, trustee, etc., versus The Mississippi and Missouri Railroad Company and others, in the matter of the decree entered in said cause at the May term, 1866, of said court, the sum of two thousand ($2,000) dollars, in full for my services as trustee in the three mortgages made to me on said railroad, and foreclosed in said case, & wherein the property mortgaged was sold on the 9th day of July, A. D. 1866.

$2,000. E. W. DUNHAM, *Trustee.*

[U. S. revenue stamps affixed & cancelled.]

NEW YORK, *Aug.* 4, 1866.

Recieved of Thomas F. Withrow, special master in chancery, the sum of two hundred and ninety-seven thousand and nine hundred and fifty-eight and $\frac{50}{100}$ dollars, said sum being paid me as trustee for certain

bondholders from the sale of the Oskaloosa division of the Mississippi and Missouri Railroad in Iowa, under the first mortgage upon said Oskaloosa division of said railroad, foreclosed by decree in chancery in the circuit court of the United States in and for the State of Iowa, at the May term, 1866, thereof, wherein I, as trustee, was plaintiff, and The Mississippi and Missouri Railroad Company and others were defendants, by cross-bill filed in a cause entitleed "Thomas C. Durant and others versus The Mississippi and Missouri Railroad Company and others."

$297,958 50. E. W. DUNHAM, *Trustee.*

[U. S. revenue for receipt affixed & cancelled.]

319 NEW YORK, *Aug.* 4, 1866.

Recieved of Thomas F. Withrow, special master in chancery, the sum of nine hundred and ninety-three thousand one hundred and ninety-five and $\frac{02}{100}$ dollars, said amount being paid me as trustee for certain bondholders from the sale of the first division of the Mississippi and Missouri Railroad in Iowa, on the first mortgage upon said first division of said railroad, foreclosed by decree in chancery in the United States circuit court in and for the State of Iowa, at the May term, 1866, thereof, wherein I, as trustee, was plaintiff, and the said Mississippi and Missouri Railroad Company & others were defendants, by cross-bill filed in a cause entitled "Thomas C. Durant and others versus the Mississippi and Missouri Railroad Company & others."

$993,195 02. E. W. DUNHAM, *Trustee.*

[Reciept U. S. revenue stamp affixed & cancelled.]

DAVENPORT, *July* 10, 1866.

Recieved of Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., trustees in mortgage by Mississippi and Missouri R. R. Co., seven hundred and fifty dollars, in full of sevices as solicitors and counsel in suit to foreclose said mortgage in U. S. circuit court for district of Iowa.

$750. JNO. N. ROGERS.

[Two cents U. S. revenue affixed & cancelled.]

Recieved of Thomas F. Withrow, special master in chancery, the sum of seven hundred and ninety thousand seven hundred and eighty-six and $\frac{78}{100}$ dollars, said amount being paid to us as trustees for certain bondholders from the sale of the second or western division (from Iowa City west) of the Mississippi and Missouri Railroad in Iowa, and of the land grant of said railroad, under the first mortgage upon said western division and land grant of said railroad, foreclosed by decree in chancery in the circuit court of the United States in and for the State of Iowa, at the May term, 1866, thereof, wherein we, as trustees, were plaintiffs, and The Mississippi and Missouri Railroad Company were defendants, by cross-bill filed in a cause entitled "Thomas C. Durant and others versus the Mississippi and Missouri Railroad Company and others."

$790,786 78. THOMAS E. WALKER,
FRANKLIN HAVEN,
Trustees.

Witness: L. V. F. RANDOLPH.

[Two cents revenue affixed & cancelled.]

Recieved of Thomas F. Withrow, special master in the case of Dunham, Durant, and others, vs. The M. & M. R. R. Co'y and others, seven thousand five hundred and fifty-nine and $\frac{70}{100}$ dollars, being amount of our fee and costs as counsel in the said case in the circuit court of the U. S. for Iowa.

October 6th, 1866.

COOK AND DRURY,
By JNO. P. COOK.

[Two cents U. S. rev. affixed, &c.]

I certify that I have recieved the sum of six hundred and fifty dollars, my fees and expenses as special master in chancery, and
320 also the sum of two thousand & one hundred dollars for revenue stamps attached to the master's deed.

Dated at , this 7th day of October, 1866.

THO. F. WITHROW,
Special Master in Chancery, C. C. U. S. Dist. of Iowa, in case of Durant et al. v. M. & M. R. R. Co. et al. &c., &c.

[Two cents U. S. rev. affixed & cancelled.]

(Endorsed:) Filed May 15, 1867, in open court.
W. G. WOODWARD, *Clerk.*

On this day, to wit, the sixteenth day of May, in the May term, A. D. 1867, of said court, in the records of proceedings thereof, in said entitled cause is the following entry, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for the District of Iowa, ss:

No. 61.

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jun'r, complainants, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, et al., defendants.	Original bill in equity for forecloseure of mortgage.
EDWARD W. DUNHAM, COMPLAINANT, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, junior, et al., defendants.	Cross-bill in above case.
THOMAS E. WALKER & FRANKLIN HAVEN, complainants, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., et al., defendants.	Cross-bill in first above entitled case.

Decree affirming all the master's reports in this case, to wit:

And now, on this sixteenth day of May, A. D. 1867, being the third day of the regular term of this court, came the said parties, complain-

ants and respondents in this action, by their respective solicitors, and it appearing by the records of this court in this cause, that, heretofore, to wit, on the first Monday of August, A. D. 1866, (that being a regular rule day of this court,) the said parties appeared at a session of this court on that day, and that the special master in this case, Thomas F. Withrow, esq., then and there filed his report showing the sale of said property so mortgaged by the said defendant The Mississippi and Missouri Railroad Company, under and by virtue of the decree foreclosing said several mortgages, and that the court did then and there confirm said sale and master's report by a decree under date of sixth August, A. D. 1866, duly signed by his honor J. M. Love, judge of said court, and then and there duly recorded among the records
321 of this case, and now particularly referred to and made a part of this order and decree, and is now here absolutely and finally confirmed, adopted, and made a further order in this case, & of effect then and now, as fully and specifically as the same can be made of record in this court.

And now also comes Thomas F. Withrow, esq., special master in this case, and files his further and final report in the premises in words and figures, to wit:

(There is inserted in this decree a full and complete copy of said master's final report with the exhibits thereto appended. As said report and exhibits are heretofore set out, commencing at folio 1754 of this transcript, the same are here omitted.)

Which report, having been submitted to the court, together with a motion to confirm the same by the said Cook and Rogers, solicitors for said complainants, and the court being fully advised in the premises, do now here order, adjudge, and decree that the said report be now confirmed and entered of record, and that the said special master, Thomas F. Withrow, so far as he has acted and reported in the premises, be discharged.

And it is further ordered that, for the purpose of correcting misdescriptions of lands, if any, and such other orders necessary to be made in this cause, the same be continued on the docket from day to day and term to term until otherwise ordered.

J. M. LOVE, *Judge, &c.*

On this day, to wit, the twenty-eighth day of October, A. D. 1868, came B. F. Allen, the receiver in said cause, and filed in the office of said clerk a report, which report is in the words & figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et al.

To the honorable the judges of the circuit court of the United States for the district of Iowa:

The undersigned, receiver appointed by this court in the above-entitled cause, respectfully represents to the court that he has received of the fund ordered to be delivered to him by the decree herein four hundred and fifty thousand dollars of the first mortgage bonds of the Chicago, Rock Island and Pacific Railroad Company, with interest c'u-

pons attached, and that he has been notified by W. F. Coolbaugh, esq., treasurer of said company, that the remainder of said fund will be delivered to the reciever upon the treasurer being advised of the exact amount thereof, and the time and place the reciever wishes to recieve the same.

I further report that I will, without delay, and upon the adjournment of the present term of this court, take all the steps necessary to secure the control of the entire fund.

B. F. ALLEN, *Reciever.*

(Endorsed:) Filed Oct. 28th, 1868.

W. G. WOODWARD, *Clerk.*

There is also on the files of said court in said cause another
322 report, signed by B. F. Allen, reciever, but of the date of the filing thereof there is no endorsement or other record in the office of said clerk. Said report is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL. } Reciever's report.

To the honorable the judges of the circuit court of the United States for the district of Iowa:

The undersigned, reciever appointed by this court in the above-entitled cause, respectfully reports: That, since making his last report to this court, he has recieved of the fund ordered to be delivered to him by the decree herein ninety-one of the first-mortgage bonds of the Chicago, Rock Island and Pacific Railroad Company, and ninety-eight thousand four hundred and sixty-five $\frac{46}{100}$ in money, being the balance of the fund remaining undivided at the making of said report; that the entire fund now under my control, and belonging to said fund, consists of five hundred and forty-one of said bonds, and the sum of ninety-eight thousand four hundred and sixty-five $\frac{46}{100}$ dollars in money; and that said bonds and money have been delivered to me by The Chicago, Rock Island and Pacific Railroad Company.

B. F. ALLEN, *Reciever.*

On this day, to wit, the twenty-ninth day of October, in the October term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

MARK HOWARD & ALS.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company & als. } No. 69. Eq.

On the application of Frederick A. Foster, for leave to file his petition herein, it is ordered that he have such leave, and that the distribution of the fund by the reciever, in pursuance of the decree, be suspended until the determination of the appeal taken from the decree to the Supreme Court, or until the further order of this court; and that the complainants have leave to move, at the next term of this court, in case said appeal shall not have been then argued & submitted, to set aside and rescind this order.

On this day, to wit, the thirtieth day of October, in the October term, A. D. 1868, of said court, in the record of proceedings in said entitled cause, is the following entry, to wit:

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL. } 69. Equity.

By consent of parties the reciever herein is directed to make no sale of the bonds of the Chicago, Rock Island and Pacific Railroad in his pos'ession until the further order of this court, or of a judge thereof.

J. M. LOVE, *Judge.*

323 On this day, to wit, the tenth day of April, A. D. 1869, came John V. McCullom, by Scammon, McCagg, and Fuller, his solicitors, and files in said clerk's office a motion, with a petition appended, which motion & petition are in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD AND JOHN WEBBER & OTHERS, complainants,
vs.
THE CITY OF DAVENPORT, THE CHICAGO, ROCK Island & Pacific Railroad Company, and others, defendants. } In equity.

And now comes John V. McCollum, of the city and county of Philadelphia, State of Pennsylvania, who is a citizen of said State of Pennsylvania, and prays leave of this honorable court to file his petition, herewith presented and shown to the court, in the above-entitled cause, and that, upon filing the same, he may be allowed such relief in the premises as he shall appear entitled to, according to the rules and practice of this court, and as shall to justice and equity appertain.

April 8th, 1869.

By his solicitors—

SCAMMON, MCCAGG AND FULLER

(Endorsed:) Filed May 10th, 1869.

GEORGE B. CORKHILL, *Clerk.*

UNITED STATES OF AMERICA, *District of Iowa, ss:*

In the circuit court of the United States for the district of Iowa. Eighth judicial district.

MARK HOWARD, JOHN WEBBER, JOSEPH Young, Clark Durant, Thomas W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison,
vs.
THE CITY OF DAVENPORT, THE CHICAGO, ROCK Island & Pacific Railroad Company, George W. Stanton, junior, John Elliott, and Blakely Wilson. } In equity.

To the judges of the circuit court of the United States for the district of Iowa:

John V. McCollum, of the city and county of Philadelphia, in the State of Pennsylvania, who is a citizen of the State of Pennsylvania, respectfully shows unto your honors—

That he is the owner & holder of eighty-four (84) bonds of one thousand ($1,000 00) each, and three bonds (3) of five hundred dollars
324 ($500) each, representing and amounting, in all, to the sum of eighty-five thousand five hundred dollars, ($85,500 00,) issued by The Mississippi and Missouri Railroad Company, a corporation created under and by virtue of the laws of the State of Iowa, together with the c'upons attached to said bonds, some of which are long since past due, and others not yet due; and that he is also the owner and holder of c'upons to the amount of twenty-eight thousand dollars, ($28,000,) which were attached to other bonds issued by said railroad company, and which are all past due and wholly unpaid; and the originals of said bonds and c'upons this petitioner will present and prove in this court, as the court may hereafter require.

Petitioner further shows unto the court that all of said bonds and c'upons were secured by the mortgages issued by said Mississippi and Missouri Railroad Company, as stated in the bill, and shewn in the proofs and exhibits now on file in this court in the above-entitled cause; to which, for greater and sufficient certainty, this petitioner craves leave to refer, and makes the same a part of this petition.

And this petitioner further shows unto the court that the aforesaid bonds and c'upons are wholly unpaid, and that neither he nor any other person or corporation on his behalf, has ever made any agreement or arrangement for the collection and payment of said bonds and c'upons for a less sum than the amount upon the face thereof stipulated to be paid; and so your petitioner states and shows unto your honors that the said bonds and c'upons are still unpaid, and payable according to the original tenor thereof; and being secured, as above stated, by mortgages upon the property and franchises of said Mississippi and Missouri Railroad Company, the same are to be paid out of the assets and property of said company in the order by which the same were secured by the mortgages given for that purpose, in pref'rence to the general creditors of said corporation, whether by judgment or otherwise, whose claims are subsequent in point of time, & subject, in order of security, to the aforesaid bonds and c'upons belonging to this petitioner.

And your petitioner further shews unto your honors that, by reason of the premises, he is entitled to have his aforesaid bonds and c'upons paid out of the funds now in this court, or under its control, realized from the sale of the property and franchises of the said company, under the authority and by the proceedings set forth and shewn in the bill, answer, evidence, exhibits, and proceedings in the above-entitled cause now on file in this court, & which, as this petitioner is informed and verily believes the fact to be, as appearing upon the records of this court, amounts to about the sum of five hundred and forty-one thousand five hundred & twenty-seven dollars, ($541,527,) and which payment should be made to your petitioner before anything is paid to the complainants in this cause, Mark Howard, John Webber, Joseph Young, Clark Durant, Thomas W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, & Jared F. Harrison, or any claims represented in this court by the defendants The Chicago, Rock Island and Pacific Railroad Company,

George W. Stanton, jr., John Elliott, and Blakely Wilson, inasmuch as the bonds and c'upons belonging to your petitioner, and described in the schedule hereto attached, are prior in order of lien and of security, as this petitioner is advised, informed, & believes, to any and all the claims represented by the parties complainant in this suit.

325 Wherefore this petitioner files his affidavit herewith, marked Exhibit "B," and prays that the same may be taken as a part of this his petition; & thereupon prays that, upon the final hearing of this cause, this court will order, direct, and decree that the aforesaid bonds and c'upons belonging to this petitioner shall be first paid to him, together with all arrearages of interest thereon, out of the funds now in this court or under its control in the hands of B. F. Allen, reciever, before any part of said fund shall be distributed and paid to any of the other parties to this suit, and the proceedings therein now pending in this court, together with his legal costs in this behalf.

And may it please your honors to grant unto your petitioner such other and further relief in the premises as in justice and equity he shall appear entitled to.

By his solicitors—

SCAMMON, McCAGG AND FULLER.

SAM. W. FULLER, *of Counsel.*

Exhibit "B."

UNITED STATES OF AMERICA,
Eastern District of the State of Pennsylvania,
County of Philadelphia, ss:

John V McCollum, of said county of Philadelphia, in the State of Pennsylvania, being first duly sworn, deposes and says that he is the owner and holder of eighty-four bonds of one thousand dollars each, and three bonds of five hundred dollars each, representing in all the sum of eighty-five thousand five hundred dollars, ($85,500,) of the Mississippi and Missouri Railroad Company, together with the c'upons thereon long since past due, as well as those not yet due, and also c'upons to the amount of twenty-eight thousand ($28,000) dollars on other bonds of said company, all past due and remaining unpaid, all of which said bonds and c'upons are secured by mortgage on the railroad and property of said company.

And this deponent further says that he has never made, entered into, or had any arrangement or understanding with any person or corporation whatever, for the collection of said bonds or c'upons or any part of the same, or consented to any such arrangement, nor, to the best of his knowledge or belief, have said bonds or c'upons or any of them, ever been subject to any such arrangement or agreement; but the same and the amount represented thereby are now a valid lien against said company and its property, secured by mortgage, as hereinbefore stated.

And this deponent further says that he has not, nor have any of the prior holders of the bonds, so as aforesaid owned by this deponent, ever made, had, or entered into any arrangement by which he or they would or should recieve any amount in satisfaction of such bonds or c'upons or any of them, less than the full amount due thereon, nor were these bonds or c'upons, or any of them, ever subject to any arrangement or agreement, made, as this deponent is informed, some time in the latter part of the year A. D. 1865, between George W. Stanton, jr., John Elliott, and Blakely Wilson, committee, and such stockholders and bondholders of the said Mississippi and Missouri Railroad Company as should assent thereto, respecting the stock and bonds of said company.

And this deponent further states that he is informed and believes that in a certain cause in the circuit court of the United States, held in and for the district of Iowa, wherein Mark Howard and others were complainants, and The City of Davenport, The Mississippi and
326 Missouri Railroad Company, and others were defendants, a certain decree was, at a term thereof, begun and holden on the twelfth day of May, A. D. 1866, entered, among other things providing that The Chicago, Rock Island and Pacific Railroad Company (which, as he is informed and believes, had become the purchaser of the said Mississippi and Missouri Railroad Company's property, land, and franchises, for the sum of five million five hundred thousand dollars ($5,500,000,) of which five hundred and fifty-two thousand three hundred and twenty dollars was agreed to be reserved and distributed among the stockholders of the said Mississippi & Missouri Railroad Company, being equal to 16 per cent. on the par value of the stock of said company) should pay over and deliver to B. F. Allen, as recievер, the sum of five hundred and forty-one thousand five hundred and twenty-seven dollars, (being part of said sixteen per cent. on the par value of stock, as hereinbefore stated,) either in cash, or bonds of said Chicago, Rock Island & Pacific Railroad Company; that he should convert the said bonds so recieved into cash, and from the funds so realized and in his hands pay the costs of said suit in which said decree was rendered, & his own costs, and apportion the balance remaining in his hands among the several complainants in said suit in a manner specifically provided in said decree.

And this deponent further says that he is informed and believes that said fund is now in the hands of said recievер, in cash and bonds.

And this deponent further states that he is informed and believes that the complainants in said suit are severally general creditors of said Mississippi and Missouri Railroad Company, who have recovered judgments against said company, which said judgments are liens subsequent to, & subject to the lien of this deponent, under the said mortgage or mortgages securing his said bonds or c'upons; that the fund so ordered to be distributed in and by said decree, wholly arises from the sale of property covered by the said mortgage or mortgages so securing said bonds & c'upons, and is a corporate fund, and, as he believes, is first subject to the payment of the said indebtedness of said Mississippi and Missouri Railroad Company, so, as aforesaid, held and owned by this deponent, & is, so far as he knows, the only fund now remaining, and the only property out of which the said indebtedness so held and owned by him can be collected.

And this deponent further says that he is informed and believes that an application is soon to be made to have said fund distributed among the complainants in said suit, under the order of said court; that legally & equitably, as he believes, he is entitleed to have the said indebtedness held by him first paid out of the same, and unless it is so paid he knows of no way in which he can ever collect or recieve the same.

And this deponent further says that he is informed and believes that the mortgage or mortgages securing his said bonds have been foreclosed in the said circuit court of the United States in and for the district of Iowa, and a sale of all the property and franchises of the said Mississippi and Missouri Railroad Company had, in pursuance of the decree of said court, and that the fund now in the hands of the said B. F. Allen, recievер, & hereinbefore referred to, is part of the proceeds of said sale, and is the only balance remaining of said sale.

And this deponent further says that he has placed his said bonds and

c'upons, and all his rights and interests in the matters in this affidavit referred to, in the hands & control of Messrs. Scammon, McCagg, and Fuller, attorneys at law, of Chicago, Illinois, with full authority and direction in and to them to take all such steps and institute all
327 such suits or proceedings as shall seem to them necessary or expedient to assert or protect his rights or interests in the premises.

J. V. McCOLLUM.

Sworn to & subscribed before me this twenty-seventh day of March, 1869.

W. GRIER HIBLER,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

I, Benjamin Patton, clerk of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, do hereby certify that I am well acquainted with the handwriting of W. Grier Hibler, esquire, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, and still is, a commissioner of the United States, duly appointed by the said circuit court, and authorized by law to take affidavits & acknowledgments of bail, and to do all other acts lawfully pertaining to said office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and of the indpendence of the United States the 93rd.

[L. S.]

JNO. P. RICH,
For Clk Circ. C't U. S.

On this day, to wit, the fifteenth day of April, A. D. 1869, came J. Bardwell, by Polk, Hubbell & Barcroft, his solicitors, and filed in said clerk's office a motion with a petition appended, which motion is in the words and figures following, to wit:

United States of America, district of Iowa.

MARK HOWARD & JOHN WEBBER, COMPLAINANTS, & Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, & Jared F. Harrison, intervening claimants, & joined as complainants herein,

vs.

THE CITY OF DAVENPORT, THE MISSISSIPPI and Missouri Railroad Company, The Chicago, & Rock Island Railroad Company, The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakely Wilson, The City of Muscatine, The City of Iowa City, and The County of Scott.

} In the circuit court of the U. S. for the district & circuit of Iowa. No. 69, chancery.

To the honorable judges of the circuit court of the United States, in and for the circuit & district of Iowa:

Joshua Bardwell, your petitioner, respectfully represents that he is a citizen and resident of the State of Massachusetts; that he has
328 an interest in, and is entitled to, a portion of the fund in controversy in the above-entitled cause, and now in the hands of a receiver appointed by this court; that the claim of your petitioner to a portion of said fund is adverse to all the parties to said action, and is not derived from or through the claimants of said fund in said action, and is in no wise affected or determined by the order and decree heretofore rendered in said cause.

That, on the eighth day of May, A. D. 1857, The Mississippi & Missouri Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa for the purpose of constructing a railroad therein, executed to Thomas E. Walker and Curtis B. Raymond, as trustees for the uses and purposes therein mentioned, a mortgage, by which said company conveyed to said trustees and their successors, all and singular, the roadway, stations, depot lands, and other lands appurtenant to said railway, then owned or thereafter to be acquired by said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, in said State, and the right, title, and interest of said company to all the lands of the United States granted by the act of Congress of May 15th, 1856, to the State of Iowa, and by the act of the legislature of the State of Iowa of July 14, 1856, to said company, together with all the locomotives, cars, buildings, machinery, tools, or implements belonging to said company, and all the rights, franchises, and privile*d*ges appurtenant to said road, then existing or thereafter to be acquired, in trust for the holders of bonds authorized to be issued by said company in any amount not exceeding the sum of seven millions of dollars, in bonds of one thousand dollars each, each of said bonds bearing date May 8th, 1857, and payable on the 8th day of May, A. D. 1877, to Clark Durant, or bearer, with interest at the rate of seven per cent. per annum, payable semi-annually, on the eighth days of November and May in each year until said bonds should become due.

That said railroad company, on said eighth day of May, A. D. 1857, issued and sold a large number of bonds of the denomination of one thousand dollars each, severally payable on the 8th day of May, 1877, to said Clark Durant, or bearer, with interest c'upons attached for the payment of semi-annual interest thereon at the rate of seven per cent. per annum, one of which was payable on the eighth day of May and on the eighth day of November of each year until the maturity of said bonds.

And on the eighth day of May, A. D. 1863, the said railroad company issued, sold, & delivered a large number of bonds known & designated as income bonds, being bonds issued for past-due interest c'upons on said bonds so executed by said company on the eighth day of May, A. D. 1867.

That, on the tenth day of December, A. D. 1861, said railroad company executed to Thomas C. Durant, Jacob S. Wetmore, & Robert B. Minturn, jr., as trustees for the uses and purposes therein named, a mortgage conveying all of said property mentioned and described in the mortgage herein above referred, to secure the payment of a large number of other bonds then issued, sold, and delivered by said company, and described in said mortgage; each of which bonds was for the sum of one thousand dollars, payable to said Clark Durant, or bearer, on the first day of January, A. D. 1882, with interest at the rate of seven per cent. per annum, payable semi-annually, for which interest c'upons were

attached, payable on the first day of June and January of each year until the maturity of said bonds.

329 That said company also, at different other times, executed to different other parties, different other bonds, also secured by other mortgages on said property described in said mortgages, executed by said company.

And for *more* greater certainty and more definite statement as to the several mortgages executed by said railroad company, and the several bonds and debts of said company mentioned and described therein, and secured thereby, and for more definite description of the property so mortgaged petitioner prays leave to refer to the record in the case of Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., complainants, against said railroad company, to which the trustees named in the said several mortgages were parties, lately pending in this court, and makes the record in said cause a part of this petition.

Petitioner further says that such proceedings were had in said last-mentioned action in this court that a decree was rendered in favor of the several trustees in said several mortgages against said railroad company for several sums, amounting in the aggregate to the sum of seven millions four hundred and eighty-two thousand thirty-five dollars and thirty-four cents, and a decree of foreclosure & sale of said property to pay off and satisfy said several sums; that all of said property was sold pursuant to said order & decree of said court, and The Chicago & Rock Island Railroad Company became the purchaser thereof at and for the sum of five million five hundred thousand dollars, and that the holders of the several bonds secured by the said several mortgages foreclosed in said action are entitled to the application of the proceeds of said sale according to the priorities of the several mortgages by which their respective bonds were secured.

And your petitioner further represents that the funds in controversy in this action, being the sum of five hundred and fifty-two thousand four hundred dollars, in the hands of B. F. Allen, a receiver appointed by this court, is a part of the proceeds of said sale.

And that said funds were put into the hands of the said George W. Stanton, jr., John Elliott, and Blakely Wilson, defendants in this action, with intent and for the purpose of diverting them from the payment of the said several bonds secured by said several mortgage', according to their several priorities, as ascertained and determined by this court in said action to foreclose said mortgages, under and in pursuance of an alleged agreement between a portion of the bondholders and a portion of the stockholders of said company, by the terms & stipulations of which proper proceedings were thereafter to be had for the foreclosure of the several mortgages executed by said company to secure said bonds, and that sixteen per cent. of the proceeds of said sale should be given to the stockholders of said company.

That, after the sale of said property under the proceedings to foreclose said mortgages, the one-sixteenth of the proceeds thereof, being the amount and the fund in controversy in this action, was put into the hands of George W. Stanton, jr., John Elliott, and Blakely Wilson, and by them transferred to the said receiver herein.

Petitioner further shows that, at the time of making said alleged agreement by a portion of the bond & stock holders of said company, he was, and ever since has been, and still is the owner of five of the bonds of said company, secured by the mortgage executed by said company on the eighth day of May, A. D. 1857, one bond of the class desig-

330 nated as income bonds, and one bond issued by said company se-

cured by said mortgage of said company, executed on the tenth day of December, A. D. 1861, as hereinbefore stated, with the several coupons thereto attached, and that there is now due to him thereon the sum of about nine thousand dollars, and that he is entitled to the payment thereof out of the money in the hands of the receiver in this cause according to the priorities of the several mortgages by which they were secured as aforesaid.

Petitioner further shows that he was not present at the making of said alleged agreement between said bondholders and stockholders of said company, never assented to said agreement, or in any manner consented to the diversion of said sixteen per cent. of the proceeds of the sale of said property, or of any other sum, from the payment of said bonds.

Petitioner further shows that a large number of the holders of said bonds, and the owners of a large amount thereof, were not parties to said alleged agreement, and have never in any manner consented to the diversion of any portion of the proceeds of said sale from the payment of said bonds, and that the lien of petitioner, and the holders of said bonds who have not assented to said alleged agreement, is prior and paramount to any right, lien, or interest of the said Mark Howard, John Webber, & other parties joining with them as complainants in this action to said fund.

Wherefore petitioner prays that an account may be had and taken of the bonds held by persons who did not enter into said alleged agreement, and have in no manner assented to or ratified the same; and in order thereto that a special master be appointed by this court to inquire and report how many & what bonds were represented by the holders thereof, at the meeting of the bondholders & stockholders of said company, at which said agreement is alleged to have been made; and that on the final hearing hereof the court may find & determine the amounts and priorities of the several bonds secured by said several mortgages, & order, adjudge, and decree that said fund now in the hands of the receiver in this case be applied to the payment and discharge of said bonds according to the ascertained priorities thereof, before any portion thereof is applied to the payment of the claims of complainants, according to the decree of the court heretofore rendered in this cause, and for such other and further relief as may be just and equitable.

POLK, HUBBELL & BARCROFT,
Att'ys for Petitioner.

(Endorsed:) Filed April 15th, 1869.
GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the eleventh day of May, A. D. 1869, came the plaintiffs, by Grant, their solicitor, and filed in said cause, in said clerk's office, the mandate of the Supreme Court of the United States, which mandate is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit of the United States for the district of Iowa, greeting:

Whereas lately, in the circuit court of the United States for the district of Iowa, before you, or some of you, in a cause between
331 Mark Howard & John Webber, complainants, and Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Van-

derveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Marg'et J. Nesbit, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, intervening claimants joining in the bill, and The City of Davenport, The Mississippi and Missouri Railroad Company, The Chicago & Rock Island Railroad Company, The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Wilson, The City of Muscatine, The City of Iowa City, and The County of Scott, defendants, wherein the decree of the said circuit court entered in said cause is in the following words, to wit:

[Here follows a full & correct copy of the final decree in this cause, a full, true, and correct copy of which appears herein, commencing at folio 777 [339] of this transcript.]

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appear.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-eight, the said cause came on to be heard before said Supreme Court on said transcript, and was argued by counsel, on consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs, and that the said complainants recover against the said defendants The City of Davenport et al., for their costs herein expended & have execution therefor. 8 February, 1869.

You therefore are hereby commanded that such execution and proceedings be had in said cause, as, according to right and justice, & the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-eight.

Costs of complainants: Clerk, $; attorney, $, paid by defendants. Taxed by

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

(Endorsed:) Filed May 11th, 1869.
GEORGE B. CORKHILL, *Clk.*

On this day, to wit, the thirteenth day of May, A. D. 1869, came Frederick A. Foster, by Withrow and Wright, his solicitors in said entitled cause, and filed in said clerk's office an affidavit of Ebenezer Cook, which affidavit is in the words & figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL. } Affidavit of E. Cook.

I, E. Cook, of the city of Davenport, in the State of Iowa, being first duly sworn, depose and say that I have read a paper purporting to be a copy of an affidavit of James Grant, in the above-entitled cause,
332 subscribed & sworn to before one S. F. Smith, on the eighteenth

day of March, A. D. 1869, in which the said Grant is represented as making the following statement:

"I further declare, on oath, that Ebenezer Cook, secretary of the Miss. & Mo. Company, informed me, about the time his deposition was taken, that all the bonds of all classes have been surrendered to the trustees, except thirty-six bonds of one thousand dollars each."

That said statement, as appears by said paper, is alleged to have been made in reference to the bonds issued by the said M. & M. Railroad. I expressly and positively declare that I never used the language above quoted, either literally or substantially, to the said James Grant at the time named or at any other time; that I remember a conversation with the said Grant about the 9th day of May, 1867, in which I told him substantially that I did not know the amount of bonds paid, but that as nearly as I could recollect, all the trust company's certificates issued for bonds, except about $36,000, had been taken up; that said trust company's certificates were issued to assenting bondholders for bonds surrendered to the trust company, pursuant to the contract under which the mortgages were foreclosed; that such certificates were not issued to non-assenting bondholders.

That I never told said Grant that all of the non-assenting bonds except thirty-six had been paid, and that I am informed and verily believe that the number of such bonds outstanding very greatly exceeds the number named; that at the time at which the said Grant represents that I made said statement, I had knowledge of over one hundred thousand dollars of outstanding non-assenting bonds; and I had been informed and believed that a much larger amount was outstanding.

I further say that I have read in said paper the following statement:

"I was also, on the eighth day of March, 1869, informed by Messrs. Elliott and Wilson, that The Chicago, Rock Island & Pacific R. R. Co. retained by their consent four months' interest on the bondholders' share of the five and a half millions, making about one hundred and fourteen thousand dollars, to meet any contingencies which might arise from any claim or contest of the non-assenting bondholders, and this sum is amply sufficient to pay every dollar of outstanding bonds of the M. and M. Co. which did not assent to the terms of sales, and accept the pro rata shares under the trustees' contract;" that I have no knowledge as to whether said statement was made by the said Elliott and Wilson to the said Grant, but I do know that said statement is untrue in every particular; that no interest was ever retained from the assenting bondholders for any such purpose; and that, as I am informed and believe, the sum named would be entirely inadequate to pay the amounts due to the holders of the outstanding and non-assenting bondholders of the Mississippi and Missouri Railroad Company.

EBENEZER COOK.

Sworn & subscribed before me this 19th day of April, A. D. 1869.
[L. S.] D. B. SHELLEY, *Notary Public.*

(Endorsed:) Filed May 13, 1869.
GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the fifteenth day of May, A. D. 1869, came H. S. McComb, by Nourse and Kauffman, his solicitors, and filed in said cause a motion, to which a petition was appended, which motion and petition are in the words and figures following, to wit:

333 In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL., PL'FFS,
vs.
THE CITY OF DAVENPORT ET AL., DEF'TS. } 69. Chancery.

And now comes H. S. McComb, a citizen and resident of the State of Deleware, at the city of Wilmington, in said State, and by his attorney moves the court for leave to file his petition herein, claiming and interest and lien upon the funds in the hands of B. F. Allen, a receiver appointed in said cause, and under the control of this court, and asks that, on the filing & hearing of said petition, the court may find and determine the extent of the interest of said petitioner in said fund, and that it may order, adjudge, & decree that the lien of petitioner is prior and paramount to any and all claims of the parties joining as complainants in this cause, and that such fund, or so much thereof as may be neesessary for that purpose, be applied to the payment and satisfaction of the amount found due petitioner, and such other relief as petitioner may be entittled to receive.

C. C. NOURSE,
Att'y for Petitioner.

In the circuit court of the United States for the district of Iowa.

MARK HOWARD
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company.

To the circuit court of the United States for the district of Iowa:

Your petitioner, H. S. McComb, a citizen of the city of Wilmington, and State of Deleware, of the United States of America, shows to the court—

That, heretofore, to wit, before the execution of the deed of trust and mortgages hereinafter set out, The Mississippi and Missouri Railroad Company was organized a body corporate under the laws of the State of Iowa, for the purpose of constructing and operating a railroad within said State.

That, in pursuance of said purpose and according to the authority of the articles of incorporation, said company afterwards, to wit, on the day of , 185 , executed their certain trust deed, conveying to the trustees therein named, to wit, Thomas C. Durant and Jacob S. Wetmore, in trust for the uses & purposes therein named, all the right, title, and interest of said company then or thereafter acquired, in and to the railroad of said company, the equipments and appurtenances thereof, from the city of Davenport to Council Bluffs, Iowa; and also all the right, tittle, and interest which the said company now have or shall hereafter acquire in and to all public lands of the United States, granted by act of Congress, approved May 15th, 1856, to the State of Iowa, and by the general assembly of the State of Iowa by act approved July 14, 1856, granted to said Mississippi and Missouri Railroad Company; that said conveyance and deed as aforesaid was in trust to secure bonds then about to be and thereafter issued, known as second mortgage construction bonds, in an amount not to exceed seven hundred thousand dollars, subject, nevertheless, to any prior mortgages or liens theretofore created on said road.

That under and by virtue of said trust deed the said Mississippi

334 and Missouri Railroad Company issued and sold their bonds in the market, to an amount unknown to your petitioner, in sums of five hundred & one thousand dollars each, with interest at seven per cent. per annum, payable semi-annually, and with c'upons attached for the payment of said interest, which said bonds were payable on the first of January, 1882.

That of the bonds so issued your petitioner is now the owner and holder of a bond for the sum of five hundred dollars, issued on the tenth day of December, 1861, payable to C. W. Durant or holder or bearer thereof, with interest as aforesaid, payable on the first of July & January of each year, which said bond is No. 750 of the series so secured by the deed of trust aforesaid, and that the said bond with c'upons attached, except as to the first two years' interest after the date of the bond, remains the property of petitioner and is wholly unpaid.

Your petitioner further states that he is now the owner and holder of receipts of the treasurer & register of the said Mississippi and Missouri Railroad Company No. 210, dated February 1st, 1864, for interest c'upons of the first mortgage construction bonds of said railroad company, to the amount of two hundred & fifty-two & $\frac{50}{100}$ dollars issued as scrip by said company, convertible into the second mortgage construction bonds of said company according to the terms of agreement bearing date October 1st, 1862, whenever presented in sums of five hundred or one thousand dollars, being the denomination of said second mortgage construction bonds.

That said c'upons were surrendered under said agreement, and that petitioner is and was entitled to claim an interest in the mortgage given to secure said bonds to the amount of said receipt or scrip.

Your petitioner further shows that, heretofore, to wit, on the fifth day of , 1866, Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., filed their bill in this court against the said Mississippi and Missouri Railroad Company et al., to foreclose certain mortgage liens upon the railroad, land grant, franchise, road-bed, and other property, in which all the parties having or claiming liens on said road and other property of said company were parties, either plaintiff or defendant, and that the trustees aforesaid in the deed of trust hereinbefore set out, to secure among others the bonds held by your petitioner and the c'upons surrendered as aforesaid, and the scrip aforesaid were made parties.

That, on the eighth day of May, 1866, it was in said cause decreed, in and by the court, among other things, that there was due on the several mortgages and deeds of trust described in said decree and foreclosed in said proceeding for principal and interest, the sum of $7,182,545\frac{37}{100}$ dollars, to be paid to the trustees in said several mortgages and deeds of trust set up in the several bills of complaint and cross-bills of the several defendants in the said suit, and that in default of such payment within a term fixed in said decree, the property of said Mississippi and Missouri Railroad Company hereinbefore described was decreed to be sold for the satisfaction and payment thereof, all of which will more fully appear by the record of said cause now in this court, to which ref'rence is made herein for greater certainty and made a part of this petition.

That no part of the proceeds of said sale has been paid to the plaintiffs in this action, nor has anything been paid upon the bonds of complianant hereinbefore described, or the scrip for the c'upons surrendered as aforesaid, nor has the interest or any part thereof been paid either by said company or said trustees.

335 Petitioner further shows that, on or about the 20th day of October, A. D. 1865, and prior to said foreclosure and sale, an arrangement and agreement was made by and between The Chicago and Rock Island Railroad Company, a body corporate under the laws of the State of Illinois, and other parties, including a portion of the holders of the said mortgage bonds, of the class named in the deed made to secure the debt due your petitioner, by which it was agreed by the parties to said agreement, to sell the property of the said company, included in the trust deed, made to secure your petitioner's debt for the sum of five and one-half millions of dollars, and to divide the proceeds of the said sale, in part, to stockholders of said M. & M. R. R. Company, and a part to the payment of a percentage only of the bonds secured by the mortgages & trust deeds aforesaid, and that it was further agreed to convey the title to the purchaser by means of a foreclosure of said mortgages and trust deed, and to pass the title under a decree and sale by this court.

Petitioner expressly avers that he never assented to said agreement, & never at any time *have* consented to accept of a percentage in payment of the bond and c'upons aforesaid, and was never a party in any manner thereto. Petitioner show' that, in pursuance of said agreement, said property so described in the trust deed made to secure the petitioner's debts, was bid off by The Chicago, Rock Island and Pacific Railroad Company, at the sale by the master, at the nominal sum of two millions one hundred thousand dollars, but that, in truth and in fact, the purchaser *of* said sale had agreed with the trustees and other parties in interest to pay, and the true consideration of the deed and sale was, the sum of five and one-half millions of dollars.

That, under said arrangement & agreement, it was agreed that the stockholders of the Mississippi and Missouri R. R. Company should have of the proceeds of the sale of said property the sum of sixteen per cent. of the par amount of stock held by them, and that, under said agreement, the sum of about $560,000 of the proceeds of said sale has been reserved and set apart for the benefit of said stockholders of said Mississippi and Missouri Railroad Company.

Petitioner further shows that the plaintiffs in this cause are general creditors only of the said Mississippi and Missouri Railroad Company, and have no lien upon said fund or any part thereof, & that the same is the proceeds of the sale of the property pledged to secure the debt due your petitioner.

That, as petitioner is advised, the sum of $560,000, and accrued interest thereon, is now in the hands of a receiver of this court, and is under its control for the purposes of distribution.

Your petitioner shows further, that, according to said arrangement and agreement to which petitioner was made a party, he is advised and believes that the trustees named in said trust deed have not come into pos'ession of any of the proceeds of the said sale, and that by the terms of said agreement your petitioner cannot receive any per cent. of the amount due him, not having assented thereto; that the said Mississippi and Missouri Railroad Company is insolvent, and that the property aforesaid so sold and disposed of as aforesaid, constituted all of its property, & petitioner has no other means of obtaining payment of his debt except by the equitable order of this court ordering a pro rata distribution of the same to your petitioner, according to his rights and priority as hereinbefore set out and claimed.

Your petitioner therefore prays the court that such proceedings
336 may be had, that petitioner may be permitted to prove his

claim against The Mississippi and Missouri Railroad Company, and may be decreed payment of his debt out of the funds now in the hands of the receiver as aforesaid, and now under the control of this court, or of such equitable and pro rata share thereof as in equity and good conscience petitioner is entitled to receive, and for such other, further, and full relief as petitioner is entitled in equity and good conscience to have.

C. C. NOURSE,
Att'y for Petitioner.

UNITED STATES OF AMERICA, *District of Iowa, ss:*

I, Charles C. Nourse, being duly sworn according to law, do depose and say that I am the attorney of petitioner in the above petition, and that I now have in my po'session the bond and scrip set forth in said petition and hold the same for collection, with full authority to take such steps in the premises as will secure the rights of the petitioner; that said petitioner H. S. McComb is not in the State of Iowa, and cannot in person make affidavit to his petition, and that a delay to obtain an oath to the same may seriously prejudice the right of said petitioner in the premises.

That I have investigated the truth of the matters set forth in said petition and have as full information thereof as the said petitioner, and that I believe the facts set forth and the several allegations of said petition are true.

C. C. NOURSE.

Sworn to & subscribed before me, by C. C. Nourse, this fifteenth day of May, 1869.

GEORGE B. CORKHILL, *Clerk.*

(Endorsed:) Filed May 15, 1869.

GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the fifteenth day of May, A. D. 1869, came the plaintiffs, by Grant, Rogers, and Edmonds, their solicitors, and the defendants, Elliott and Wilson, by Grant, their solicitor, and filed with said clerk a motion in said entitled cause; which motions are in the words and figures following, to wit:

Circuit court of the United States, dist. Io'a.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS. } In equity.

Now come the plaintiffs, and show to the court by affidavits, that the defendants The Chicago, Rock Island & Pacific Railroad Company have possession of a book called, "A book with agreement and list of assenting bondholders to the sale of Mississippi and Missouri Railroad Company;" that said book is neesessary to be examined by the plaintiffs before they can properly answer the petitions of Frederick Foster and others; that the pos'ession of said book has been demanded by the owners thereof, the railroad & trust co.; that the plaintiffs and said owners might examine said book to ascertain the true amount & number of non-assenting bondholders; the said railroad company
337 refused to surrender said book on demand. The plaintiffs now move that The Chicago, Rock Island & Pacific Co. be ordered

forthwith to produce said book before this court, that the said plaintiffs may examine and inspect the same to enable them to answer the bills of Foster and others.

GRANT, ROGERS & EDMUNDS, *for Pl'ffs.*

The trustees of the bondholders Elliott and Wilson, unite in this motion, as they wish to answer for themselves.

GRANT, *for Elliott and Wilson.*

(Endorsed:) Filed May 15th, 1869.
GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the fifteenth day of May, A. D. 1869, came the plaintiffs, by Grant, Rogers, and Edmunds, their solicitors, and the defendants, Elliott and Wilson, by Grant, their solicitor, and filed in said clerk's office the affidavit of J. H. Frothingham; which affidavit is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

I, J. H. Frothingham, president of the Union Trust Company, in the city of New York, being duly sworn, depose on oath that, some time in the year 1866, after the consum'ation of the sale to The Chicago, Rock Island & Pacific Railroad Company, of the property and franchises of the Mississippi and Missouri Railroad, the said Chicago, Rock Island & Pacific Railroad Company, through its officers, borrowed from the officers of said Union Trust Company, where the same had been deposited by Messrs. Elliott, Wilson, & Stanton, trustees for the stock & bond holders of the Miss. & Mo., a book containing a copy of the contracts of the assenting bondholders to the sale of said road, for the purpose of paying to said assenting their respective shares of bonds to which they were entitled by said contract of sale and assent. That said book has never been returned, though a demand was made for the same on the twenty-sixth day of April, 1869. The within-named books were loaned by direction of said trustees.

J. H. FROTHINGHAM, *Pres't.*

STATE, CITY, AND COUNTY OF NEW YORK:

On this the first day of May, 1869, came before me, a notary public in and for said city and county, J. H. Frothingham, to me personally known to be the person who executed the affidavit above, and being by me duly sworn, did declare on oath that the facts therein stated were true, & subscribed the same in my presence.

[SEAL.]
S. H. SLOSSON,
Notary Public, City & County of New York.

(Endorsed:) Filed May 15, 1869.
GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the fifteenth day of May, A. D. 1869, came the plaintiffs, by Grant, Rogers, & Edmunds, their solicitors, and the defendants Elliott & Wilson, by Grant, their solicitor, and filed

338 in said clerk's office the affidavits of John Elliott & Blakely Wilson; which affidavits are in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

Affidavit of John Elliott and Blakely Wilson, two of the committee appointed at a meeting of the bond and stock holders of the Mississippi and Missouri Railroad Company, held in the city of New York, October 20th, 1865, being duly sworn, depose on oath that, some time in the year 1866, after the consum'ation of the sale to The Chicago, Rock Island and Pacific Railroad Company, of the property and franchises of The Mississippi & Missouri Railroad Company, the said Chicago, Rock Island and Pacific Railroad Company, through its officers, obtained the consent of said committee to borrow from the office of the Union Trust Company, in the city of New York, where the same had been deposited by the said committee, a book containing a copy of the contracts of the assenting bondholders to the sale of said Mississippi and Missouri Railroad for the purpose of paying to said assenting bondholders their respective shares of the bonds to which they were entitled by said contract of sale and assent; that the said book was so borrowed by the said Chicago, Rock Island and Pacific Railroad Company, and has never been returned, although a demand was made for the same on these defendants, on the 29th day of April, 1869, and repeated this day, when John F. Tracy, president, and Francis H. Tows, assistant secretary, of said Chicago, Rock Island and Pacific Railroad Company were present, the latter saying, in reply to the demand, that they would not give them up.

These defendants further say that George W. Stanton, the other member of the committee, is prevented by serious illness from attending to business, and is consequently unable to unite in this affidavit.

JOHN ELLIOTT.
BLAKELEY WILSON.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this third day of May, 1869, came before me, a commissioner for the State of Iowa, in and for said city and county, John Elliott and Blakeley Wilson, to me personally known to be the persons who executed the affidavit above, and being by me duly sworn, did declare on oath that the facts therein stated are true, and subscribed the same in my presence.

[SEAL.] EDWIN F. COREY,
Commissioner for the State of Iowa in New York.

(Endorsed:) Filed May 15th, 1868.
GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the fifteenth day of May, A. D. 1869, came the plaintiffs, by Grant, Rogers, and Edmunds, their solicitors, and the defendants Elliott and Stanton, by Grant, their solicitor, and filed in said clerk's office a certain notice with the affidavit of S. F. Smith appended thereto; which notice and affidavit are in the words & figures following, to wit:

339 Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

To the Chicago, Rock Island and Pacific Railroad Company, its agents, and servants:

You are hereby notified to produce before the circuit court of the United States for the district of Iowa, at the term thereof to be held on the second Monday in May, 1869, at Des Moines, a book loaned to you by the Union Trust Company, containing agreements of bondholders, and list of surrendered bonds of the Mississippi and Missouri Railroad Company, and which book at the date of this notice you have refused to return to said trust company.

GRANT AND SMITH,
Attorneys for Pl'ff in said suit.

STATE OF IOWA, *Scott County, ss:*

I, S. F. Smith, being duly sworn, do state on oath that I served the within notice in the city of Davenport, Scott county, Iowa, on the 27th day of April, A. D. 1869, on The Chicago, Rock Island and Pacific Railroad Company, by reading the same to Ebenezer Cook, secretary of the Ch., R. I. & Pacific R. R. Co., in his presence & hearing, and by delivering to the said Cook a true copy of the same.

S. F. SMITH.

Subscribed & sworn to by S. F. Smith, before me & in my presence, this 27th day of April, A. D. 1869.

J. W. BIRCHARD, [SEAL.]
Notary Public, Scott Co., Iowa.

(Endorsed:) Filed May 15, 1869.
GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the twentieth day of May, A. D. 1867, came the defendants Elliott and Wilson, by Grant, their solicitor, and filed in the said clerk's office a motion; which motion is in the words and figures following, to wit:

Circuit court U. S.

MARK HOWARD & AL.
vs.
THE CITY OF DAVENPORT & AL.

Now come the trustees named in said decree, and file their assent to the payment of the bonds & c'upons not due, according to the decree, and they also file a request of a majority of the stockholders to continue them in their , and move the court to add to the former order of this court, that the receiver deliver to said trustees or a majority of them on their order, the judgments, c'upons, and bonds
340 which may be paid out of the sixteen per cent. dividend of the stockholders referred to in the decree.

GRANT,
For Elliott & Wilson, Trustees.

(Endorsed:) Filed May 20, 1869.
GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the twenty-first day of May, A. D. 1869, came the defendants Elliott and Wilson, by Grant, their solicitor, and filed in said clerk's office a paper which is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS. } In equity.

To the judges of said court and the receiver in said cause:

Being desirous of closing up the matter in controversy in the cause & collecting as near as possible the judgments, c'upons, and bonds to which we may be entitled under the decree, the court may, in vacation, make all the proper orders to perform the decree which do not involve us in personal liability; we desire the judgments, c'upons, & bonds to which we may be entitled in the execution of the decree to be delivered to Mr. James Grant.

JOHN ELLIOTT.
B. WILSON.

(Endorsed:) Filed May 21st, 1860.
GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the twenty-sixth day of May, in the May term, A. D. 1869, of said court, in the records of proceedings thereof in said entitled cause, are the following entries, to wit:

MARK HOWARD
vs.
THE CITY OF DAVENPORT ET AL.

Now on this the first day of the term of the court, comes Mark Howard & others, plaintiffs, by Grant, Rogers & Edmunds, their attorneys, and file in this cause the mandate of the Supreme Court of the United States, affirming the decree herein, and move the court to execute said mandate by distributing the fund in the hands of the receiver, in pursuance of said decree, which motion is overruled.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Now on this day, the 20th day of May, this cause coming on to be heard, on the motion of plaintiffs herein to modify the decree heretofore rendered in accordance with certain papers on file with said motion in said cause, and the court having heard the same and being fully advised, overrules said motion.

341 MARK HOWARD
vs.
THE CITY OF DAVENPORT ET AL.

And now on this day, the fifteenth day of May, this coming on

to be heard, on the motion of plaintiffs herein to compel the defendants, The Chicago, Rock Island and Pacific Railroad Company, to produce a certain book for the examination of plaintiffs, and the court having heard the argument of counsel, and being fully advised in the premises, overrules said motion.

MARK HOWARD
vs.
THE CITY OF DAVENPORT ET AL. } No. 69. Eq.

This cause coming on to be heard, on motion of complainants to distribute a portion of the funds in the hands of the recíever heretofore appointed in this cause, the motion of John V. McCollum for leave to file his petition herein, the motion of Joshua Bradwell for leave to file his petition herein, the motion of H. S. McComb for leave to file his petition herein, and the petition of Frederick A. Foster heretofore filed herein, after argument of counsel for the respective parties named, and an inspection of the record, and said several motions and petitions, it is ordered, adjudged, and decreed—

First. That the said John V. McCollum, J. Bardwell, and H. S. McComb have leave to file their several petitions and that the same be considered as filed prior to the entry of this order, and that the petitioners, the said Foster, Bardwell, McCollum, and McComb, have until the July rule-day to file a bill consolidating their claims, and setting up more specifically their several claims presented in their several petitions now on file, but no other or further claims, and that they serve a copy of their said bill on James Grant for the use of complainants; that the complainants and interveners demur, plead, or answer to said bill by the rule-day in August following, and that thereafter the parties proceed as in other causes in chancery.

And it is further ordered that the recíever set apart two hundred thousand dollars of the fund in his hands, and refrain from distributing the same until the further order of the court.

Second. That the prayer of the petitioners above-named for an order restraining the recíever from distributing any of the fund in his hands until their rights to share in the distribution thereof is determined, is refused and denied as to all of said fund except the sum of two hundred thousand dollars, and the motion of the complainants for an order directing the recíever to distribute said fund is sustained as to all except said two hundred thousand dollars; and the recíever is ordered to proceed forthwith to make the distribution of all of said fund except the said sum of two hundred thousand dollars, according to the directions given in the decree herein to the several parties to whom said decree directs such distribution to be made.

That in order to make such distribution, he will sell and convert into cash, as provided in said decree, all of the bonds of the Chicago, Rock Island and Pacific Railroad Company in his hands except the sum of two hundred thousand dollars.

Provided, that such of said parties to whom the distribution is to be made as shall so elect, shall have the right to recíeve the amounts coming to them, respectively, or any part thereof, in said bonds, in
342 specie, at a price to be agreed upon between them and the recíever, and approved by a judge of this court, not less than the current market price of the stock exchange in New York, at the date of distribution; and the recíever shall deliver the bonds to them in payment, at such rate accordingly.

And it is further ordered, (the defendants Wilson and Elliott having filed their written consent thereto as provided by said decree,) that there be paid to said parties entitled thereto, in making such distribution, so far as said amount to be distributed will suffice therefor,) of their claims not yet matured, on the terms and conditions and in the order of priority of payment provided by said decree.

And thereupon the petitioners, Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, and each of them pray an appeal to the Supreme Court of the United States from the order and decree contained in the "second" paragraph hereinbefore set out, being the order denying and refusing the relief prayed in their petitions, and in the petition of each of them, that the reciever herein be directed to refrain from distributing the fund in his hands, and sustaining complainant's and intervenor's motion for an order distributing the fund in his hands, and sustaining complainant's and intervenor's motion for an order distributing a portion of the funds in the hands of the reciever, and directing and ordering a distribution of a part thereof; which appeals are allowed to them, and each of them, upon their filing a bond with sureties, in the penal sum of five hundred dollars, as provided by law, for the costs of the appeal.

Provided, that, in order to supersede and stay execution of said orders and decrees pending the appeal, they shall give bond, with sureties conditioned and approved as provided by law, in the penal sum of nine hundred thousand dollars.

J. M. LOVE, *Judge.*

(Endorsed:) Filed May 26th, 1869.
GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the third day of June, in the May term, A. D. 1869, came Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, by Withrow and Wright, Scammon, McCagg and Fuller, Polk, Hubbell and Barcroft, and Nourse and Kauffman, their solicitors, and filed in said clerk's office and appeal bond; which appeal bond is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

Know all men by these presents, that we, John V. McCollum, Josiah Bardwell, H. S. McComb, and Frederick S. Foster, as principals, and Samuel M. Nickerson, Daniel Thompson, Benjamin F. Murphy, George L. Davenport, George A. Davenport, F. R. West, Hoyt Sherman, George C. Tichenor, W. S. Pritchard, and F. W. Palmer, as sureties, are held and firmly bound unto Mark Howard, John Webber, Joseph Young, Clark W. Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, in the sum of nine hundred thousand dollars, to be paid to the said Mark Howard and his associates, as plaintiffs in this case, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of
343 us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this thirty-first day of May, A. D. 1869.

Whereas the above-named John V. McCollum, Josiah Bardwell, H. S.

McComb, and Frederick S. Foster, have taken an appeal to the Supreme Court of the United States from said circuit court of the United States for the district of Iowa, to reverse the judgment and decree rendered in the above-entitled suit by the said circuit court of the United States in and for the district of Iowa:

Now, therefore, the condition of this obligation is such, that if the above-named John V. McCollum, Josiah Bardwell, H. S. McComb, and Frederick S. Foster, shall prosecute their appeal to effect, and answer all costs if they shall fail to make good their plea, and shall in all things abide the judgment of the said United States Supreme Court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SAMUEL M. NICKERSON. [SEAL.]
DANIEL THOMPSON. [S'L.]
BENJAMIN F. MURPHY. [S'L.]
GEO. L. DAVENPORT. [S'L.]
GEO. A. DAVENPORT. [S'L.]
F. R. WEST. [S'L.]
HOYT SHERMAN. [S'L.]
GEO. C. TICHENOR. [S'L.]
W'M S. PRITCHARD. [S'L.]
JOHN V. McCOLLUM, [S'L.]
By SCAMMON, McCAGG & FULLER, *his Att'ys.*
FREDERICK A. FOSTER, [SEAL.]
By WITHROW AND WRIGHT, *his Att'ys.*
J. BARDWELL, [SEAL.]
By POLK AND HUBBELL, *his Att'ys.*
H. S. McCOMB, [SEAL.]
Per NOURSE AND KAUFFMAN, *his Attor's.*
F. W. PALMER. [SEAL.]

The above bond is approved as to the form thereof, and also as to the sufficiency of the sureties for the penalty of the same.

June second, 1869.

J. M. LOVE, *Judge, &c.*

(Endorsed:) Filed June 3d, A. D. 1869.
GEORGE B. CORKHILL, *Clerk.*

On this day, to wit. the third day of June, in the May term, A. D. 1869, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Now come John V. McCollum, J. Bardwell, H. S. McComb, and Frederick A. Foster, petitioners in the above-entitled action, and in open court present their appeal and supersedias bond, in compliance with the requirements of the order allowing their appeal from the decree hereinbefore entered, on the hearing of the several petitions filed
344 herein, and move the court to approve the same; and the court, having inspected said bond as to its sufficiency in form and security, orders that the said bond be filed, and is approved as to the form thereof, and the sufficiency of the sureties for the penalty thereof.

J. M. LOVE, *Judge.*

(Endorsed:) Filed June 3rd, 1869.
GEORGE B. CORKHILL, *Clerk.*

THE DISTRICT OF IOWA, *ss:*

I, George B. Corkhill, clerk of the circuit court of the United States for the said district of Iowa, do hereby certify that the foregoing transcript, from folio one to one thousand nine hundred and fifty-four, and from page one to seven hundred and eighty-nine inclusive, contains a full, true, and perfect copy from the record, of all the proceedings of said court in said cause, wherein Mark Howard and John Webber were plaintiffs, and Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, intervening claimants, and The City of Davenport, The Mississippi and Missouri Railroad Company, The Chicago and Rock Island Railroad Company, The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakely Wilson, The City of Muscatine, The City of Iowa City, and The County of Scott, defendants, and Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, intervening claimants, as the original of the same now remain in my custody.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at my office in the city of Des Moines, in said district, this 15th day of Nov., A. D. 1869.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

Clerk's fees for transcript, $215 00.

(Indorsement on record:) In the United States circuit court, district of Iowa. John V. McCollum, Frederick A. Foster, J. Bardwell, & H. S. McComb, appellants, ag't Mark Howard, John Webber, Joseph Young, and several others, appellees. Transcript.

SUPREME COURT OF THE UNITED STATES.

No. 406 of 1869.

JOHN V. McCOLLUM, FREDERICK A. FOSTER, J. BARDWELL, AND HENRY S. McCOMB, APPELLANTS,

vs.

MARK HOWARD, JOHN WEBBER, JOSEPH YOUNG, CLARK DURANT, CHARLES W. DURANT, GEORGE BLISS, WILLIAM ELLIOTT, HENRY VANDERVEER, ROBERT MURRAY, BETSEY TRACY, HARRIET LE CONTE, MARGARET I. NISBET, JOSEPH W. CLARK, VOLKERT P. DOUW, CHRISTOPHER Y. LANSING, JARED F. HARRISON, THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY, AND THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

345 Pleas before the circuit court of the United States for the district of Iowa, at a term begun & holden at Des Moines, commencing on the 19th day of October, A. D. 1866.

Be it remembered that, on the fifth day of July, A. D. 1869, Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, came, by their solicitors, Withrow and Wright, Nourse and Kauffman, and Polk, Hubbell and Barcroft, and filed in the office of the clerk of said court a consolidated cross-bill; which bill is in the words and figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD AND JOHN WEBBER
ag't
THE CITY OF DAVENPORT, THE MISSISSIPPI & Missouri River Railroad Company, the Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, j'r, John Elliott, and Blakely Wilson, defendants.

To the judges of the circuit court of the United States for the district of Iowa:

Frederick A. Foster, a citizen of the State of New York; John V.

McCollum, a citizen of the State of Pennsylvania; J. Bardwell, a citizen of the State of Massachusetts; and H. S. McComb, a citizen of the State of Deleware, pursuant to & in accordance with the order of this court made in the above-entitled cause on the twenty-sixth day of May, A. D. 1869, upon their several petitions hereinbefore filed, bring this their bill against Mark Howard and John Webber, complainants; The City of Davenport, The Mississippi and Missouri Railroad Company, The Chicago, Rock Island and Pacific Railroad Company, The Chicago and Rock Island Railroad Company, George W. Stanton, j'r, John Elliott, & Blakely Wilson, defendants; and Joseph Young, Clark Durant, Thomas W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher *T.* Lansing, and Jared F. Harrison, intervenors in said cause; and thereupon your orators complain and say—

That The Mississippi & Missouri Railroad Company, one of the defendants in the above-entitled cause, was, prior to the execution of the several bonds and mortgages hereinafter mentioned, and on the twenty-second day of December, A. D. 1852, organized as a body corporate under the laws of the State of Iowa, for the purpose of constructing & operating a railroad in said State.

That pursuant to said purpose & in accordance with its articles of incorporation & the laws of said State, the said railroad company did execute and sell in the market to divers persons, unknown to your orators, its bonds, known as the construction bonds of said company; that said bonds were each for the sum of one thousand dollars, and had c'upons appended for interest thereon, at the rate of seven per cent. per annum; that they bore date the eighth of May, 1857; that the principal thereof was payable on the eighth day of May, 1877, to Clark Durant, or bearer; that the interest c'upons thereto appended were payable at the office of the company in the city of New York, semi-annually, on the fifteenth days of May and November in each year; all of which will more fully appear by said bonds and c'u-
346 pons, a copy of each of which is appended to this bill & marked Exhibit A; the copy of said bond being a copy of all the bonds of said series, with the exceptions of the number thereof, and the copy of said c'upon being a copy of all other c'upons appended to said bonds, with the exceptions of the numbers and the date of maturity; that ref-'rence is made to said copies with the same purpose and effect as if the same were incorporated in the body hereof; that to secure the payment of said bonds according to the tenor thereof, the amount to be issued being limited to the sum of seven millions of dollars, the said Mississippi and Missouri Railroad Company did execute and deliver its mortgage bearing date , and conveying to Thomas E. Walker and Curtis B. Raymond, trustees, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railway, then owned, or thereafter to be acquired by said company, constituting and belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, in said State, being a part of the railway of said company, extending from the city of Davenport, on the Mississippi River, to said city of Council Bluffs, on the Missouri River, and the appurtenances thereof, also all the right, title, and interest of said company to all public lands of the United States, granted by the act of Congress of May 15th, 1856, to the State of Iowa, and by the act of the legislature of the State of Iowa of July 14th, 1856, to the said railroad company;

'that said conveyance was in trust for the benefit of the holders of bonds issued by said company as hereinbefore alleged and set forth; that by the terms of said mortgage, the trustees named therein were empowered, upon default in making payment of the principal or interest of said bonds, or of either of them, to take possession of the railroad of said company, with its equipments and appurtenances, and of all the lands conveyed, and to use or sell the same, or any part thereof, and apply the proceeds to the payment of said bonds, as will with greater certainty appear by the copy of said mortgage appended to the cross-bill of Thomas E. Walker and Franklin Haven, in a certain cause heretofore pending and now of record in this court, wherein Thomas C. Durant, Jacob S. Wetmore, & Robert B. Minturn, jr., were complainants, & The Mississippi and Missouri Railroad Company and others were defendants, to which ref'rence is hereby made, with the same purpose and effect as if the same were incorporated in the body hereof.

That, on the tenth day of December, 1861, the said railroad company executed and sold in the market, to divers persons unknown to your orators, bonds of a series known and described as second-mortgage bonds, a part of which were for the sum of one thousand dollars each, and a part for the sum of *of* five hundred dollars each; that to each of said bonds were appended forty c'upons for the interest thereon, at the rate of seven per cent. per a*mm*um, which c'upons were payable at the office of the company, in the city of New York, on the first days of January and July in each year, all of which will with more certainty appear from the copies, one of each of said bonds and c'upons, hereunto appended, marked Exhibit B, to which ref'rence is hereby made with the same purpose and effect as if the same were incorporated in the body of this bill; that the said exhibit sets out correctly the contents of each c'upon with the exceptions of the number and the date of maturity thereof; that on said day the said railroad company, for the purpose of securing the payment of said bonds, executed another mortgage conveying to Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., the railroad of said company, with its equipments and appurtenances, from the city of Davenport to the city of Council Bluffs and to Washing-
347 ton, in the State of Iowa, and all the right, title, and interest which the said company then had, or might thereafter acquire, in and to all public lands of the United States granted by the act of Congress aforesaid to the State of Iowa, and by the State of Iowa (by the act of the general assembly aforesaid) to the said railroad company, which conveyance was subject to the mortgages then existing upon the different divisions of said railroad and the appurtenances thereunto belonging; that the said mortgage empowered the said trustees, upon default of the payment of the principal or interest of said bonds, or of either of them, to take possession of said railroad, its equipments, and appurtenances, and sell or use the same, or any part thereof, and apply the proceeds in the payment of said bonds, all of which will appear with greater certainty from said mortgage, a copy of which is appended to the amended bill of the complainants, in the case heretofore pending & now of record in this court, described hereinbefore more particularly, to which your orators crave leave to refer with the same purpose and effect as if the same were incorporated in the body hereof.

That, on the eighth day of May, 1863, the said Mississippi and Missouri Railroad Company executed and delivered to divers holders of matured c'upons of its first mortgage construction bonds, bonds of a series known and described as income bonds; that said bonds were for

the sum of five hundred dollars each, with interest at the rate of seven per cent. per annum, payable semi-annually at the office of said company in the city of New York, on the eighth days of May and November in each year, as will more fully appear by a copy of one of said bonds, and of one of the c'upons thereto appended, attached hereto as Exhibit "C," to which ref'rence is hereby made with same purpose and effect as if incorporated in the body hereof; that said bonds are secured by the mortgage executed to secure the payment of the said construction bonds.

That the said Curtis B. Raymond having declined to act as trustee under the mortgage executed to secure the payment of said construction bonds as aforesaid, one Franklin Haven was, in accordance with the provisions of said mortgage, appointed a trustee to act in his place.

That, on the fifth day of February, A. D. 1866, Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, j'r, filed their bill in this court against the said Mississippi and Missouri Railroad Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, and John Webber, to foreclose the mortgage hereinbefore described as having been executed by the said Mississippi and Missouri Railroad Company to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, j'r, to secure the payment of the said second-mortgage bonds, and praying, among other things, a sale of the property therein described and an application of the proceeds arising therefrom to the payment of the bonds by said mortgage secured; that thereafter the said Thomas E. Walker and Franklin Haven filed in said cause their cross-bill praying a foreclosure of the mortgage hereinbefore described in which they were trustees; that the property therein conveyed to them as trustees be sold, and the proceeds applied in the payment of the bonds secured by said mortgage; that upon the issues joined in said cause, a hearing was had on the eighth day of May, 1866, wherein it was adjudged and decreed that there was due to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, j'r, the sum of seven hundred and forty-five thousand dollars and two cents,
being the amount due and unpaid on the bonds secured by the
348 mortgage executed to them as trustees, as hereinbefore recited;
that there was due to the said Thomas E. Walker and Franklin Haven the sum of four millions two hundred and twenty-nine thousand nine hundred and eighty-two dollars and seventy-one cents, being the amount due and unpaid on the bonds secured by the mortgage executed to them as trustees as hereinbefore recited; that in default of payment of said sums within the time named in said decree, the property described in said mortgages should be sold and the proceeds applied to the payment of said bonds and the overdue c'upons thereto attached.

That pursuant to said decree, and in accordance with the terms thereof, said mortgaged property was sold on the ninth day of July, A. D. 1866, by a special master appointed by this court; that the Chicago, Rock Island and Pacific Railroad Company, a corporation which had been organized under and by virtue of the laws of the State of Iowa, for the purpose of purchasing said property and completing and operating said railroad, became the purchaser; that the aggregate amount bid at said sale for the different parcels of said mortgaged property was the sum of two millions one hundred thousand dollars, but the actual amount agreed to be paid for said property was the sum of five millions

five hundred thousand dollars; that the amount bid was nominal merely, the real agreement and understanding by and between the parties being that the purchaser should pay for the title acquired thereby the said sum of five millions five hundred thousand dollars; that the said sum of two millions one hundred thousand dollars bid at said sale was not paid, but the trustees, in whose favor the decree of foreclosure was entered, gave a receipt to the officer conducting the sale for the amount without actual payment, the same being treated as part and parcel of the said sum of five millions five hundred thousand dollars which it has been agreed should be paid for said property; that said trustees have never had in their own hands any of the moneys arising from said sale, but that all disbursements which have been made to the holders of bonds entitled thereto have been made by The Chicago, Rock Island and Pacific Railroad Company, and applied on the said sum of five millions five hundred thousand dollars agreed as aforesaid to be paid for said mortgaged property.

That, on or about the 20th day of October, 1865, and prior to said foreclosure and sale, an arrangement was made and entered into by and between some of the holders of bonds of each of the series which had been issued by the Mississippi and Missouri Railroad Company and some of the stockholders of said railroad company, in which it was agreed that a portion of the proceeds to be realized from the sale of said property as above alleged, and which of right was applicable in the payment of the bonds and matured c'upons, should be withheld from such application, and be improperly applied to the payment to the stockholders of said company sixteen per cent. of the par amount of the stock in said company, while the holders of the several series of bonds to which the bonds now held by your orators belong should receive less than the par amount then due and unpaid thereon, according to a scale at the time agreed upon; that they or neither of them have ever assented to or approved of the same, and that the several bonds, c'upons, and scrip which they severally hold, nor any part thereof, are, in any manner, by the agreement of the holders thereof or otherwise, subject to the same; that many of the holders of said bonds of said several series have accepted of the sums provided for the payment of the same by the said agreement and scale; that neither your orators nor any one hold-
349 ing the bonds and c'upons and scrip which they now hold, have accepted said sum in payment of the same; that they have never relinquished or in any manner waived their right to demand payment of the same in full; that pursuant to said agreements a portion of the proceeds of said sale, amounting to nearly five hundred and fifty thousand dollars, and now amounting with the accumulations of interest, to over six hundred thousand dollars, has been set apart to the payment of the said sixteen per cent. to the holders of the capital stock of said railway company.

That the complainants in said cause being general creditors of the said railroad company, filed their bill and amended bill in this cause, praying the application of said fund, then in the hands of the defendant The Chicago, Rock Island and Pacific Railroad Company, to the satisfaction of their several claims against the said Mississippi & Missouri Railroad Company; that subsequently thereto, the said intervenors, who are also general creditors of said railroad company, filed their petitions in said cause, praying that they be allowed to become co-complainants in said bill, and be allowed to prove the amount of the several claims with the complainants, and to share pro rata in said

fund or the proceeds thereof, upon the same terms as those already joined as complainants; that upon issues joined by the pleadings filed in said cause this court has entered a decree, by which it is ordered that the defendants The Chicago, Rock Island and Pacific Railroad Company, (a corporation organized by the consolidation, in accordance with the laws of the States of Illinois and Iowa, of The Chicago, Rock Island and Pacific Railroad Company of Iowa above mentioned, and of The Chicago and Rock Island Company of Illinois,) and George W. Stanton, jr., John Elliott, and Blakeley Wilson, pay to one B. F. Allen, as receiver of this court, said fund, to be distributed to the complainants and intervenors, in payment, as far as the same is adequate, of the several demands which they hold against said Mississippi and Missouri Railroad Company, all of which will more fully appear by the record of the pleadings and decree of this court, to which, for greater certainty as to the allegations of said pleadings, and the orders and adjudications in said decree, your orators crave leave to refer; that pursuant to said decree the said Chicago, Rock Island and Pacific Railroad Company paid said fund to said receiver, and it is now held by him under the orders & instructions of the court; that said fund is a part of the proceeds of said mortgage sale.

That your orator Frederick A. Foster represents that he is the owner and holder of ten of the construction bonds above described, being the bonds numbered 60, 61, 62, 63, 64, 65, 622, 623, 625, 1031, with the c'upons attached to each bond numbered from 16 to 40, inclusive; that there is now due to him from the Mississippi and Missouri Railroad Company the principal of said bonds and the matured c'upons on each; that the principal of said bonds and the last-mentioned c'upons remain wholly unpaid; that neither himself nor any prior owner and holder of said bonds and c'upons has waived payment of the full amount of said bonds and matured c'upons; that he has never made or assented to any arrangement or agreement that said bonds or c'upons, or any of them, should be satisfied or discharged as valid and binding obligations of said railroad company by the payment of any less sum than the full amount of principal and interest matured thereon.

And your orator John V. McCollum represents that he is the owner and holder of the construction bonds of said Mississippi and Missouri Railroad Company numbered 421, 423, 592, 778, 1453, 1905, 2531,
350 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, & 2724, each thereof being for the sum of one thousand dollars with the exception of the bonds numbered 592 & 778, which are each for the sum of five hundred dollars; that he also owns and holds the interest c'upons appended to said bonds, numbered from — to 40, inclusive; that he is also the owner and holder of the income bonds of said company, hereinbefore described, numbered 148, 152, 153, 154, 155, 156, 157, 200, 235, 236, 237, 238, 240, 252, and those numbered from 159 to 198, both inclusive, each thereof being for the sum of one thousand dollars, and that he owns and holds the interest c'upons thereto appended, numbered from — to 40, inclusive; that the principal of said bonds and the matured c'upons on each are now due and unpaid; that he is also the owner and holder of certain c'upons which were attached to other second mortgage construction bonds of said Mississippi & Missouri Railroad Company, which are all past due and wholly unpaid; that the said c'upons so owned by him, and the said bonds to which they were attached, and the number and variety of each, are as follows, viz:

Number of c'upons owned.	Their number.	Number of the bonds from which they were detached.
50	1	2658 to 2707, both inclusive.
38	2	2908 to 2945, " "
55	3	2946 to 3000, " "
36	2	3001 to 3036, " "
64	4	3037 to 3100, " "
15	2	3101 to 3115, " "
96	5	3116 to 3211, " "
97	6	3212 to 3290, " "
80	7	3291 to 3370, " "
7	2	3371 to 3377, " "
23	8	3378 to 3400, " "
57	9	3401 to 3457, " "
50	10	4051 to 4100, " "
50	11	4101 to 4150, " "
50	12	4151 to 4200, " "
50	13	4201 to 4250, " "
800		

That no part of said bonds and c'upons have been paid; that neither he nor any other person or corporation in his behalf has ever made, assented, or agreed to the arrangement & agreement hereinbefore recited for the payment of said bonds and c'upons by the payment of a less sum than that due on the face thereof; and that he is now entitled to be paid the full amount stipulated to be paid on the said bonds and matured c'upons.

And your orator J. Bardwell represents that he is the owner and holder of the construction bonds of said company numbered as follows: 781, 782, 783, 784, 785, with the c'upons attached numbered 16 to 40, inclusive; also of the income bonds issued by said company, the bond for the sum of five hundred dollars numbered as follows: 101½, with the c'upons thereto attached; also the second mortgage construction bonds of said company, the bond for the sum of one thousand dollars numbered as follows, 154, with the interest c'upons attached, numbered from 7
351 to 40, inclusive; that the principal of all of said bonds and the matured c'upons thereto attached are now due and unpaid, and he is now entitled to be paid from the funds of said company the full amount thereof; that he has not entered into any arrangement or agreement for the payment of said bonds and c'upons by the payment of a less sum than the amount stipulated to be paid thereon by the face thereof; that he has not assented, neither has any other person or corporation assented for him, to the arrangement hereinbefore recited for the payment of said bonds by a scale providing for their payment at less than par.

Your orator H. S. McComb represents that he is the owner of the second-mortgage bond numbered 750, issued by said company for the sum of five hundred dollars, as a part of the series known by that designation and hereinbefore described; also of the c'upons thereto appended, and numbered from 5 to 40, inclusive; that no part of either the principal or of said c'upons has been paid, and the full amount of said bonds and the matured c'upons are now past due and unpaid; that, on the first day of October, 1864, the said railroad company entered into an agreement with such holders of its construction bonds as should assent thereto to issue scrip for the matured interest on said first mortgage construction bonds; that said scrip was convertible into second mortgage construction bonds of said company when presented in sums of five hundred dollars; that there was issued by said company scrip, numbered 210, for the sum of two hundred and fifty dollars and fifty cents, pursuant to and in accordance with said agreement; that

a copy of said scrip is appended thereto as Exhibit D, to which ref'rence is hereby made with the same purpose and effect as if incorporated in the body hereof; that he is also the owner and holder of said scrip; that the same has never been paid or converted into bonds under said agreement; that he has not, neither has any one for him, entered into or approved of any arrangement or agreement for the payment of said bonds, c'upons, and scrip for the payment of any sum less than the amount stipulated upon the face thereof to be paid; and he expressly alleges that he was not a party to the arrangement for scaling the bonds of said company for payment at less than par by an application of the proceeds of the sale of the mortgaged property as hereinbefore recited.

And your orators further show that, by reason of the premises, they are severally entitled to have their bonds, c'upons, and scrip aforesaid paid out of the funds now in this court, or under its control, realized from the sale of the property and franchises of said company, as hereinbefore alleged; that such payment should be made to your orators before anything is paid to the complainant and intervenors in this cause or any claims represented in this cause by The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Wilson, inasmuch as said bonds, c'upons, and scrip are, as your orators are informed, advised, believe, and allege, prior to any and all of the claims represented by the complainants, intervenors, and defendants herein.

And therefore your orators severally pray that upon the final hearing hereof your honors will order, direct, & decree that the aforesaid bonds, c'upons, and scrip belonging severally to your orators shall be first paid to them, together with all arrearages of interest thereon, out of the fund under the control of this court and in the hands of B. F. Allen, receiver, as aforesaid; that if the court shall find that your orators are general creditors only of the said Mississippi and Missouri Rail-
352 road Company, having no lien upon said fund prior to that of the complainants and intervenors herein, that the court will order, direct, and decree that they share pro rata with said complainants and intervenors in the distribution of said fund, or of the proceeds thereof, upon the same terms and basis; and that your orators severally have such other, further, or different relief in the premises as to the court shall seem meet.

WITHROW AND WRIGHT,
Solicitors for Fred. A. Foster, and, with
SCAMMON, McCAGG AND FULLER,
Solicitors for John V. McCollum.
POLK, HUBBELL AND BARCROFT,
Solicitors for J. Bardwell.
NOURSE AND KAUFFMAN,
Solicitors for H. S. McComb.

EXHIBIT A.

No 623.

UNITED STATES OF AMERICA, *State of Iowa:*

Mississippi and Missouri Railroad Co.—Construction bond, $1,000.—*Secured by mortgage on land grant and railroad.—Length of road mortgaged* 257 *miles.*

The Mississippi and Missouri Railroad Company acknowledge them-

selves to owe to Clark Durant, or bearer, one thousand dollars, which sum said company promise to pay to the said Clark Durant, or to the holder hereof, at their office in the city of New York, on the eighth day of May, 1877, and also interest thereon at the rate of seven per cent. per annum, semi-annually, on the eighth day of each November and May ensuing the date hereof until the said principal sum shall be paid, on presentation of the annexed interest-warrants at the office of the company in the city of New York.

The payment of the construction bonds is secured by a deed of trust or mortgage upon the railroad of the company, and upon the lands granted to aid in its construction as specified in said deed of trust or mortgage, and in the annexed certificate of the trustees.

But the company reserve the right to purchase this obligation at any time by agreement with the holder, or to redeem the same at the par value thereof on any of the days specified for the payment of interest, by advertising their intention to do so in two newspapers published in the city of New York, and one published in the city of London, at least twelve months previous to the day when said bonds are to be redeemed. The numbers of the bonds to be called in to be determined by lot.

In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and treasurer, this eighth day of May, 1857.

[SEAL.] JOHN A. DIX, *President.*

M. FLAGG, *Treasurer.*

The undersigned trustees do hereby certify that The Mississippi and Missouri Railroad Company have executed to us a deed of trust or mortgage purporting to convey their road and equipments, and all appurtenances thereto, from the city of Iowa City to the city of Council Bluffs, and also all the right, title, and interest which the said company now have, or shall hereafter acquire, in and to all of the public lands of
353 the United States granted by act of Congress approved May 15, 1856, to the State of Iowa, and by the general assembly of the State of Iowa by act approved July 14, 1856, granted to the Mississippi and Missouri Railroad Company, as specified in said instrument, in trust for the benefit of the holders of their bonds of similar tenor as the foregoing, issued and to be issued to an amount not exceeding in all seven millions of dollars, with power to take possession of said railroads, its equipments, and appurtenances, and sell and use the same, or any part thereof, in case of a default thereof in paying the interest or principal of said bonds, or any of them, and with power to sell the lands so conveyed, and apply the proceeds to the payment of said bonds; and that the foregoing is one of the several bonds described in and secured by said deed, and that we have caused the said deed to be recorded in the several counties through which the said road passes, and in which the said lands are situated.

THOMAS E. WALKER,
F. HAVEN, *Trustees.*

(There is printed in red on the face of the foregoing bond the figures "$1,000.")

The Mississippi and Missouri Railroad Company will pay to the bearer, at their office in the city of New York, on the eighth day of May, 1877, thirty-five dollars for interest due that day on their bond No. 623.

$35. H. PRICE, *Secretary.*

a copy of said scrip is appended thereto as Exhibit D, to which ref'rence is hereby made with the same purpose and effect as if incorporated in the body hereof; that he is also the owner and holder of said scrip; that the same has never been paid or converted into bonds under said agreement; that he has not, neither has any one for him, entered into or approved of any arrangement or agreement for the payment of said bonds, c'upons, and scrip for the payment of any sum less than the amount stipulated upon the face thereof to be paid; and he expressly alleges that he was not a party to the arrangement for scaling the bonds of said company for payment at less than par by an application of the proceeds of the sale of the mortgaged property as hereinbefore recited.

And your orators further show that, by reason of the premises, they are severally entitled to have their bonds, c'upons, and scrip aforesaid paid out of the funds now in this court, or under its control, realized from the sale of the property and franchises of said company, as hereinbefore alleged; that such payment should be made to your orators before anything is paid to the complainant and intervenors in this cause or any claims represented in this cause by The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Wilson, inasmuch as said bonds, c'upons, and scrip are, as your orators are informed, advised, believe, and allege, prior to any and all of the claims represented by the complainants, intervenors, and defendants herein.

And therefore your orators severally pray that upon the final hearing hereof your honors will order, direct, & decree that the aforesaid bonds, c'upons, and scrip belonging severally to your orators shall be first paid to them, together with all arrearages of interest thereon, out of the fund under the control of this court and in the hands of B. F. Allen, receiver, as aforesaid; that if the court shall find that your orators are general creditors only of the said Mississippi and Missouri Rail-
352 road Company, having no lien upon said fund prior to that of the complainants and intervenors herein, that the court will order, direct, and decree that they share pro rata with said complainants and intervenors in the distribution of said fund, or of the proceeds thereof, upon the same terms and basis; and that your orators severally have such other, further, or different relief in the premises as to the court shall seem meet.

WITHROW AND WRIGHT,
Solicitors for Fred. A. Foster, and, with
SCAMMON, McCAGG AND FULLER,
Solicitors for John V. McCollum.
POLK, HUBBELL AND BARCROFT,
Solicitors for J. Bardwell.
NOURSE AND KAUFFMAN,
Solicitors for H. S. McComb.

EXHIBIT A.

No 623.

UNITED STATES OF AMERICA, *State of Iowa:*

Mississippi and Missouri Railroad Co.—Construction bond, $1,000.—*Secured by mortgage on land grant and railroad.—Length of road mortgaged 257 miles.*

The Mississippi and Missouri Railroad Company acknowledge them-

selves to owe to Clark Durant, or bearer, one thousand dollars, which sum said company promise to pay to the said Clark Durant, or to the holder hereof, at their office in the city of New York, on the eighth day of May, 1877, and also interest thereon at the rate of seven per cent. per annum, semi-annually, on the eighth day of each November and May ensuing the date hereof until the said principal sum shall be paid, on presentation of the annexed interest-warrants at the office of the company in the city of New York.

The payment of the construction bonds is secured by a deed of trust or mortgage upon the railroad of the company, and upon the lands granted to aid in its construction as specified in said deed of trust or mortgage, and in the annexed certificate of the trustees.

But the company reserve the right to purchase this obligation at any time by agreement with the holder, or to redeem the same at the par value thereof on any of the days specified for the payment of interest, by advertising their intention to do so in two newspapers published in the city of New York, and one published in the city of London, at least twelve months previous to the day when said bonds are to be redeemed. The numbers of the bonds to be called in to be determined by lot.

In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and treasurer, this eighth day of May, 1857.

[SEAL.] JOHN A. DIX, *President.*

M. FLAGG, *Treasurer.*

The undersigned trustees do hereby certify that The Mississippi and Missouri Railroad Company have executed to us a deed of trust or mortgage purporting to convey their road and equipments, and all appurtenances thereto, from the city of Iowa City to the city of Council Bluffs, and also all the right, title, and interest which the said company now have, or shall hereafter acquire, in and to all of the public lands of
353 the United States granted by act of Congress approved May 15, 1856, to the State of Iowa, and by the general assembly of the State of Iowa by act approved July 14, 1856, granted to the Mississippi and Missouri Railroad Company, as specified in said instrument, in trust for the benefit of the holders of their bonds of similar tenor as the foregoing, issued and to be issued to an amount not exceeding in all seven millions of dollars, with power to take possession of said railroads, its equipments, and appurtenances, and sell and use the same, or any part thereof, in case of a default thereof in paying the interest or principal of said bonds, or any of them, and with power to sell the lands so conveyed, and apply the proceeds to the payment of said bonds; and that the foregoing is one of the several bonds described in and secured by said deed, and that we have caused the said deed to be recorded in the several counties through which the said road passes, and in which the said lands are situated.

THOMAS E. WALKER,
F. HAVEN, *Trustees.*

(There is printed in red on the face of the foregoing bond the figures "$1,000.")

The Mississippi and Missouri Railroad Company will pay to the bearer, at their office in the city of New York, on the eighth day of May, 1877, thirty-five dollars for interest due that day on their bond No. 623.

$35. H. PRICE, *Secretary.*

(There is printed in red on the face of the foregoing c'upon the figures "40.")

EXHIBIT B.

UNITED STATES OF AMERICA, *State of Iowa:*

Mississippi and Missouri Railroad Company.—Second mortgage construction bond.

No. 154. $1,000.

The Mississippi and Missouri Railroad Company acknowledge themselves to owe to one C. W. Durant, or bearer, one thousand dollars, which sum the said company promise to pay to the said C. W. Durant, or to the holder hereof, at their office in the city of New York, on the first day of January, 1882, and also interest thereon at the rate of seven per cent. per annum, semi-annually, on the first day of each January and July ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest-warrants at the office of the company in the city of New York.

The payment of this bond is secured by a deed of trust or mortgage upon the railroad of the company, and upon the lands granted to aid in its construction, as specified in said deed of trust or mortgage, and in the annexed certificate of the trustees.

In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, this tenth day of December, 1861.

[SEAL.] JOHN A. DIX, *President.*

H. PRICE, *Secretary.*

The undersigned trustees do hereby certify that The Mississippi and Missouri Railroad Company have executed to us a deed of trust or mortgage, subject to the mortgages already existing upon different divisions of said road, purporting to convey their road and equipments, and all appurtenances thereto, from the city of Davenport to the
354 city of Council Bluffs and to Washington, in the State of Iowa, and also, all the right, title, and interest which the said company now have, or shall hereafter acquire, in and to all public lands of the United States granted by acts of Congress approved May 15, 1856, to the State of Iowa, and by the general assembly of the State of Iowa, by act approved July 14, 1856, granted to The Mississippi and Missouri Railroad Company, as specified in said instrument, in trust for the benefit of the holders of their bonds of similar tenor as the foregoing, except that part of the same are for $500 each, and part for $1,000 each, issued and to be issued to an amount not exceeding in all seven hundred thousand dollars, with power to take possession of said railroad, its equipments & appurtenances, and sell or use the same, or any part thereof, in case of a default in paying the interest or principal of said bonds as in manner provided for in said deed of trust, or any of them, and with power to sell the lands so conveyed, and apply the proceeds to the payment of said bonds, and that the foregoing is one of the several bonds described in and secured by said deed, and that we have caused the said deed to be recorded in the several counties through which the said road passes and in which said lands are situated.

THOMAS C. DURANT,
JACOB S. WETMORE,
Trustees.

The Mississippi and Missouri Railroad Company will pay the bearer, at their office in the city of New York, on the first day of January, 1882, thirty-five dollars for interest due that day on their bond number 151.

$35. H. PRICE, *Secretary.*

(Across the face of this c'upon is printed the figures "40" in red.)

EXHIBIT C.

STATE OF IOWA, *United States of America:*

No. 101½. $500.

The Mississippi and Missouri Railroad Company.—Income bond.

Be it known that The Mississippi and Missouri Railroad Company owe to , or bear', the sum of five hundred dollars, which sum the said company are obligated to pay on the eighth day of May, 1871, with interest on said sum of five hundred dollars at the rate of seven per cent. yearly, payable semi-annually at the office of the said company in the city of New York, on the eighth days of May and November in each year, and the faith of the company is hereby pledged for the annual payment of the interest and the ultimate redemption of the principal.

This bond is issued for c'upons of the first mortgage construction bonds, which c'upons are held by H. C. Crane, trustee, in accordance with an agreement between the holders of said bonds and this company, and bearing date October 1, 1862.

In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their treasurer & secretary, the eighth day of May, 1863.

[SEAL.] GEO. T. M. DAVIS,
Treasurer.

J. S. BAKER, *Ass't Secretary.*

[U. S. revenue 20 cents, cancelled.]

355 The Mississippi and Missouri Railroad Company will pay the bearer seventy & $\frac{50}{100}$ dollars on the eighth day of May, 1871, at their office in the city of New York, due on that day on their bond number 102½.

J. S. BAKER,
Ass't Secretary.

(The word "Income" is printed in red across the face of said c'upon.)

EXHIBIT D.

$252 50. No. 210.

Mississippi and Missouri Railroad Company.

No. 13 WILLIAM STREET, NEW YORK,
, 186 .

Received from H. S. McComb c'upons from the first mortgage construction bonds of this company, amounting to balance of two hundred and fifty-two and $\frac{50}{100}$ dollars, for which this scrip is issued, convertible

into the second mortgage construction bonds of this company according to the terms of agreement, bearing date October 1st, 1862, whenever presented at this office in sums equal in amount to the denomination of said bonds.

Witness the signature of this company by its treasurer this first day of February, 1864.

GEO. T. M. DAVIS,
Treasurer.

J. S. BAKER, *Register.*

[Twenty-five cents U. S. revenue stamp attached and cancelled; indorsed, H. S. McComb.]

(Endorsed:) Filed July 5th, 1869.

GEO. B. CORKHILL, *Clerk.*

And afterwards, to wit, on the 21st day of July, 1869, came Mark Howard & John Webber, Joseph Young, Clark Durant, Thomas W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher T. Lansing, Jared F. Harrison, The Mississippi and Missouri Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, and file in said clerk's office their answer; which answer is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD AND ALS.
ag't
THE CITY OF DAVENPORT AND ALS.

Answer to bill of Foster and others.

The joint and several answers of Mark Howard, John Webber, complainants; Joseph Young, Clark Durant, Thomas W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert
356 P. Douw, Christopher T. Lansing, and Jared F. Harrison, intervenors, &c., plaintiffs in said original suit; and The Mississippi & Missouri Railroad Company, George W. Stanton, jr., John Elliott, & Blakeley Wilson, defendants therein, to the consolidated bill of Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb.

These defendants, reserving to themselves all lawful exceptions to the errors and uncertainties of said bill, for answer to so much thereof as they are advised that it is material for them to answer, say—

1. They admit the Mississippi and Missouri Railroad Company was organized, and is a corporation for pecuniary profit, for the purpose of building and operating a railroad from Davenport, on the Mississippi River, to Council Bluffs, on the Missouri.

It is also true that said railroad company, for the purpose of extending said railroad from Iowa City, a place fifty-five miles west from Davenport, to Council Bluffs, did, on the eighth day of May, 1857, issue its bonds; said bonds were for a thousand dollars each, with seven per cent. interest, payable on the eighth of November and eighth of May, in New

York, and at the same time, and as part of the same transaction, the said company did execute a deed of trust or mortgage on that part of their road and appurtenances extending from Iowa City to Council Bluffs, and on certain lands granted by Congress to the State of Iowa and by said State of Iowa to said railroad company; the number of bonds was limited to seven millions, of which amount only three millions six hundred and twelve thousand were ever issued. The said bonds and mortgage are correctly set out in said bill.

It is also true, as set out in said bill, that said mortgage was foreclosed in said suit referred to, wherein Thomas C. Durant and others were plaintiffs, and the mortgage property sold on the 9th day of July, 1866, but the amount for which it was sold is not stated in said bill, though the same fully appears in the record in this court, referred to by the plaintiffs.

It is also true that said railroad company executed the bonds and deed of trust referred to in said bill on the tenth of December, 1861, and the amount of said mortgage and the foreclosure thereof, and the amount of the sales thereof, fully appear in the record and decree referred to by the plaintiffs.

It is also true that said company, on the eighth day of May, 1863, issued certain income bonds for interest on said construction bonds, which are also included in the security of the mortgage or deed of trust to which they refer.

The said bill does not state the amount of such issue, but the same fully appears in the evidence in the case of Howard and als. vs. The City of Davenport and others. The amount was $253,000 in the mortgage of May 8th, 1857, and no income bonds in the mortgage of December 10th, 1861.

It is also true that Raymond resigned as trustee and Haven was appointed in this place.

2. These defendants, further answering, say that prior to said construction mortgage of May 8th, 1857, the said corporation had executed two other morgages on the first division of said road, extending from Davenport to Iowa City and Muscatine, one for one million of dollars, and one for four hundred thousand dollars, and these mortgages or deeds of trust not only covered the road and appurtenances of the first division of said road, but all its rolling-stock and machinery; and the said corporation had also executed a mortgage or deed of trust to
357 secure five hundred and ninety thousand dollars of bonds on the Oskaloosa division of said road, extending from Muscatine to Washington, in Washington County.

3. It is true that, on the fifth day of , 1866, or some other day, said Thomas C. Durant & others commenced proceedings to foreclose the second construction mortgage for $691,000 scrip & interest thereon, and that afterwards The Chicago and Rock Island Railroad Company purchased a majority of said bonds, & afterwards the trustees of all the other mortgages intervened and a foreclosure and sale was decreed under all of said mortgages, and the proceeds of said mortgages were severally to be divided among the several holders of bonds. The allegations of the bill as to said proceedings are true as far as they tell the transactions. These defendants refer to the bill, cross-bills, answers, and decrees, final and interlocutory, in said cause and make them part of this answer. It is also true that in pursuance of said decree of foreclosure, and in compliance with the terms thereof, said mortgaged property was sold on the ninth day of July, 1866, by a special master appointed for that purpose, and that the Chicago, Rock

Island and Pacific Railroad Company became the purchaser thereof in different parcels for the aggregate sum of two millions one hundred thousand dollars; but is not true that the actual sum agreed to be paid under said foreclosure suit for said property was the sum of five millions five hundred thousand dollars. It is not true that the amount bid was nominal merely. It is not true that the real agreement and understanding between the parties was that the purchaser was to pay for the tietle acquired thereby the said sum of five millions five hundred thousand dollars. It is not true that said sum of two millions one hundred thousand dollars bid at said sale was not paid but the trustees in whose favor the decree of foreclosure was made gave a receipt to the officers without actual payment.

It is true that there was no payment to the officer by the purchaser, nor by the trustees; but there was payment by or on behalf of the purchaser to the trustees.

It is not true that the same was treated by the trustees or purchaser as part of the five millions five hundred thousand dollars which it had been agreed should be paid for the property. It is not true that said trustees have never had, in their own hands, any of the moneys arising from said sale; and it is not true that all of the disbursements which had been made to the holders of bonds entitled thereto have been made by The Chicago, Rock Island and Pacific Railroad Company and applied on said sum of five millions five hundred thousand dollars, agreed, as aforesaid, to be paid for said mortgaged property. It is not true that any agreement was made by said Chicago and Rock Island Railroad Company, or any other person, to bid five millions five hundred thousand dollars at said foreclosure sale for said property.

And, further answering, these defendants say that at said sale of foreclosure, which was on the ninth day of July, 1866, the said Chicago, Rock Island and Pacific Railroad Company purchased the first division of said road, and appurtenances and rolling-stock, for one million of dollars, the Oskaloosa division for three hundred thousand dollars, and the land grant or construction division, under the mortgage or trust deed of May 8th, 1857, for eight hundred thousand dollars, which purchases, seperate and distinct for each parcel, exhausted all the property included in the various mortgages, and there was nothing left to apply on the second construction mortgage, and no
358 bid or sale was made under and for account of the same, and the amount applicable to the land grant or construction bonds of May eighth, 1857, under said foreclosure sale, was the sum of eight hundred thousand dollars; that the Chicago, Rock Island and Pacific Railroad Company "paid no money on the day of sale; but an arrangement was made to pay the amount of the several bids (less the costs) to the trustees in the mortgages in New York, & it was so done. The Chicago & Rock Island Railroad Company loaned the Chicago, Rock Island and Pacific Railroad Company the money to settle with the trustees for the amount of the purchase-money at the sale under the foreclosure. The committee, Stanton, Elliott, and Wilson, through the trust company, were in po'session of the great bulk of the bonds secured by the several mortgages, and an arrangement was made that they would deliver to The Chicago, Rock Island and Pacific Railroad Company those bonds, and The Chicago and Rock Island Company agreed therefor to pay the Union Trust Company certificates in the manner therein specified, and to furnish the requisite amount of money to enable the trustees in the mortgages to pay off such bonds as had not been deposited with the trust company for the committee, (Stanton,

Elliott, and Wilson.) These bonds were taken to the proper trustees by the C., R. I. & P. Co., and that company received the pro-rata share of money arising from the sale under the decree to which the bonds were entitled, and paid their loan from the C. and R. I. Company, less the amount of money left in the hands of the trustees, as above stated," the amount to pay off such bonds as had not been deposited with the trust company. These facts fully appear in the record of the case of Howard et al. vs. Davenport et al., & particularly the deposition of Ebenezer Cook. These defendants make the record and proceedings of the foreclosure suit of Durant & others, and the record & proceedings of the said Howard et al. vs. Davenport et al., and all the evidence therein now before the court, a part of this answer, and pray this court to inspect the same without further reference.

These defendants deny that, on or about the 20th of October, 1865, an arrangement was made between some of the holders of bonds of each series which had been issued by said Mississippi and Missouri Company, and some of the stockholders, in which it was agreed that a portion of the proceeds to be realized from the sale of the property as above alleged, the foreclosure sale, and which was of right applicable to the payment of the bonds & c'upons, should be withheld from such application, and be improperly applied to the payment of the stockholders of said railroad company, of sixteen per cent. of the par amount of their stock in said company, by which the holders of the several series of bonds, to which the bonds now held by the plaintiffs, Foster and others, should receive less than the par amount then due, and unpaid thereon. They deny that neither the plaintiff Foster et al. never assented thereto; they may not have been parties to any agreement ment therein. In fact, they were not the holders of the bonds, they claim until long after the decree of foreclosure, and may never have given their individual assent; but it is not true the holders of the several bonds and c'upons and scrips now claimed by the said Foster and others, plaintiffs, were never subject to an agreement for the sale of said Mississippi and Missouri Railroad and its property and franchises, by which the holders of said bonds agreed to accept less than the full par value thereof and interest. It is not true that many of the holders of the bonds of the several issues have accepted of the sums pro-
359 vided for the payment thereof by said agreement and foreclosure sale. It is true that some of the bondholders have accepted their share of the foreclosure sale, and surrendered the bonds themselves, and a large majority have made and accepted an agreement hereinafter referred to in this answer. It is not true that neither of the orators, nor any one holding said bonds and c'upons and scrips which they now hold, have accepted said sum in payment of the same, nor that they have ever relinquished nor in any manner waived their right to demand payment of the same in full, nor is it true, in the manner set forth in said bill, that a portion of the proceeds of said sale of foreclosure, amounting to nearly five hundred and fifty thousand dollars, and now amounting to over six hundred thousand dollars, has been set apart to the payment of said sixteen per cent. to the stockholders of the capital stock of the Mississippi and Missouri Railroad Company. It is true that the complainants and intervenors in the bill of Howard et al. have filed a bill in this court to subject the fund to be paid to the stockholders of the Mississippi and Missouri Railroad Company, under an agreement therein referred to, to the payment of certain guaranteed bonds held by them, and that certain monies and bonds have been paid to a receiver in this court. The plaintiffs, Foster et al.,

make the record of said case a part of their bill, and these defendants make it a part of their answer, and refer to the facts in said cause as a part of their answer in this. It is not true that the funds in the hands of the receiver, *is* now held by him under the orders and instructions of this court, is a part of the proceeds of said mortgage sale, or is in any way connected therewith; on the contrary, the whole fund arising from the mortgage sale has been delivered to the several trustees or their agents, and has been distributed by them or their agents to the persons entitled thereto, or held in trust for them when not distributed. These defendants deny that Frederick A. Foster is the owner and lawful holder of any of the bonds and c'upons held by him. They deny that the principal or any part of the interest thereon remains wholly unpaid; they deny that neither he nor the persons holding said bonds and c'upons prior to him, has waived payment of the full amount of said bonds. They deny that neither he nor any person who held said bonds, before or since he held them, has ever made or assented to any arrangement or agreement that said bonds or c'upons or any of them should be said, satisfied, or discharged as valid and binding obligations of said railroad company, by the payment of less than the full amount of principal and interest due thereon. Further answering, these defendants deny that John V. McCollum is the real owner or holder of any of the bonds, c'upons, convertible bonds, income bonds, or scrip, referred to by him in said bill; they deny that no part of said bonds and c'upons have been paid; that neither he nor *has* any person in his behalf, has ever made or assented to any arrangement or agreement for the payment of said bonds and c'upons by a less sum than due on the face thereof; they deny that he is entitled to receive any sum of money thereon. These defendants deny that said Bardwell is the real owner and holder of any of the bonds referred to by him, or that the same are unpaid and now due, or any part thereof, or that he has not entered into any agreement to take for payment less than the amount stipulated, or that neither he, 'or any person holding said bonds, ever assented to any arrangement for their payment at less than par.

These defendants deny that H. S. McComb is the real owner & holder of the bonds and c'upons and scrip referred to by him; they deny that no part of the principal or interest thereon has been paid.

360 They deny that neither he nor any person who was the holder of said bonds, c'upons, and scrips ever assented to any agreement for scaling the bonds of the company, or taking a less sum than their face in satisfaction thereof. And, further answering, in relation to said bonds and c'upons attached, and scrip and c'upons without bonds, claimed by Foster, McCollum, Bardwell, and McComb, these defendants say they are informed and believe said that bonds, c'upons, and scrip are really the property of the Chicago, Rock Island and Pacific Railroad Company, and are held by said Foster and others in trust and for the benefit of said company, and as such have been paid and satisfied by an agreement referred to in the bill of Howard, and which will be more fully set forth in another part of this answer; and as to the eight hundred c'upons referred to by McCollum on bonds number 2658 to 4250, of which c'upons amounting to 200, being Nos. 10 on bonds 4051 to 4100; No. 11 on bonds 4101 to 4150; No. 12 on bonds 4151 to 4200, and No. 13 on bonds 4201 to 4250, all due on the 8th November, 1864, are not signed by any officers of the corporation, and are of no force or validity unless attached to some valid bond. These defendants say that the bonds from which said c'upons were detached were in pos'ession of

and belonged to the Chicago and Rock Island Railroad Company when due, and the bonds from which they were detached were surrendered and satisfied by the said company or its successors, the Chicago, Rock Island and Pacific Railroad Company, to the Union Trust Company, and subjected to the terms of the agreements of October 20th, 1865, and November 1st, 1865, referred to in Howard's bill, and after payment and satisfaction thereof, and after the same were due, have been put in circulation by said railroad corporations, or one of them, contrary to equity and the rights of these defendants, and the said c'upons being fully paid and extinguished, are no longer a binding obligation of the Mississippi and Missouri corporation.

And, further answering, these defendants deny that by reason of anything alleged in said bill the plaintiffs Foster et als. are entitled to have their bonds, c'upons, and scrips paid out of the funds now in court, or under its control. They deny that such payment should be made before anything is paid to the complainants Howard and others, or the defendants Stanton and others. They deny that the fund in court was derived from any mortgage sale whatever. They deny that the bonds, c'upons, and scrip held by Foster and others have any prior right to the plaintiffs Howard & others. They deny that the plaintiffs Foster et als., either as special or general creditors of the Mississippi and Missouri Railroad Company, have any claim prior or equal in equity to the claims of the plaintiffs Howard and others, and the claims of Stanton, Elliott, and Wilson, or that they are entitled to a pro-rata share of the fund now in court.

And these defendants, having specifically answered all the allegations of said bill, for further answer thereto say that The Mississippi and Missouri Railroad Company executed the five mortgages heretofore referred to, to secure bonds as follows: First, a mortgage and bond on the first division of the road and machinery from Davenport to Iowa City and Muscatine, for one million of dollars; a second mortgage and bonds on the same division for four hundred thousand dollars; a third mortgage on the Oskaloosa division from Muscatine to Washington, for five hundred and ninety thousand dollars; a fourth mortgage and bonds on the division of the road from Iowa City to Council Bluffs, and certain lands granted by Congress, called land-grant or construction
361 bonds and mortgage, for $3,612,000; a fifth mortgage and bonds subject to the other four on the whole road and appurtenances for $691,000. On the 20th of October, 1865, the interest on all these mortgages had become due; income bonds and scrip convertible into income bonds had been issued by the corporation to its bondholders to a large amount hereinafter stated. The corporation became embarrassed after having built its main line to Kellogg, 142 miles west of Davenport, and its branch to Washington. At a meeting of the stock and bond holders held in New York on the 20th of October, 1865, it was resolved to sell the road and franchises to the Chicago and Rock Island Railroad Company, for five million five hundred thousand dollars, upon condition that the distribution of the same should be made according to the following scale:

First mortgages	$1,000,000	
Income bonds	214,000	
Interest to July 1, 1868	42,490	
		$1,256,490
Second mortgage	$400,000 *a* 80c.,	320,000

Oskaloosa division bonds	590,000		
Income bonds	73,000		
Scrip	2,939		
	665,936 *a* 62½ c.,		416,210
Land-grant div. bonds	$3,612,000		
Income	253,000		
Scrip	12,550		
	$3,878,550 *a* 80c.,		2,714,635
Second mortgage construction, or fifth mortgage	691,000		
Scrip	2,764		
	693,764 *a* 30c.,		208,129
Capital stock	$3,452,500 *a* 16c.,		552,400
To pay expenses of foreclosure mo'tgages			32,000
			$5,500,000

That at said meeting B. Wilson, G. W. Stanton, and John Elliott were appointed a committee or trustees to arrange the mode and terms of payment with The Chicago and Rock Island Railroad Company, and to arrange with some trust company to receive the bonds and stock of the parties assenting, and issue certificates therefor, setting forth what the holder was entitled to receive. That, on the first of November, A. D. 1865, the said Mississippi and Missouri Railroad Company and the said Chicago and Rock Island Railroad Company entered into a written agreement in pursuance of the resolutions passed by said meeting of the stock and bond holders, and to carry out said resolutions, whereby The Mississippi and Missouri Ralroad Company was, with all possible dispatch, to cause the mortgages upon the line of its road, &c., to be foreclosed, and its entire property, real and personal, to be sold, so that the purchaser should be able to transfer a perfect and unincumbered title to such incorporated company in Iowa as The Chicago and Rock Island Railroad Company may designate to become the purchaser and owner thereof. The Rock Island Company was to cause a
362 company to be incorporated in Iowa, which should purchase said Mississippi and Missouri Railroad so encumbered, and pay said five and a half millions, either in its own seven per cent. bonds, guaranteed by The Chicago & Rock Island, or the bonds of a consolidated company, if one could be made, bearing seven per cent. interest. The company in Iowa was incorporated by the name of The Chicago, Rock Island and Pacific Railroad Company, and The Chicago and Rock Island Railroad Company was consolidated with it, and the former company assumed all the obligations of the latter. The contract of sale gave the possession and income of the Iowa road to the Chicago and Rock Island Company, which was to pay interest on the purchase from December 1st, 1865, at seven per cent. The committee, or trustees, Stanton, Elliott, and Wilson, proceeded to perform the duty required of them, appointed the Union Trust Company of New York agents to receive the bonds & the certificates of stock of the assenting bond and stock holders, give due notice thereof, and fixed the period of assent to July 9th, 1866, the day on which the Iowa road was sold under the mortgages. Most of the bond and stock holders assented to the terms of the sale by surrendering their bonds and certificates of stock to the Union Trust

Company, and signed an agreement in a book provided for that purpose, with Stanton, Elliott, and Wilson, approving the proposed sale and division of the proceeds, according to the scale above alluded to, and the distribution of any surplus among the assenting parties, and assenting to a foreclosure and sale, in order to convey a clear title to the purchaser, under the contract of November first, 1865. The Union Trust Company gave to the holders of such assenting bonds and stock certificates that they were entitled to their pro rata share of said five and a half millions, according to said agreement, less the excess, if any, of the cost of foreclosure and sale, of the sum of $32,134 00, the unappropriated balance of said five and a half millions, and indorsed upon each certificate the aggregate amount to be divided, and the pro rata share of each class of bonds, of the stock, and the overplus for expenses; all which fully appeared in the proceedings and record in the case of Howard et als. vs. Davenport & others in this court, and a part of this cause. By the terms of the contract of sale and distribution the holders of the last mortgage bonds were to receive only thirty per cent., and a large majority of them refused to assent to the terms of the sale, and commenced in this court, through their trustees, Durant and others, to foreclose their mortgage. The Chicago & Rock Island Company bought of the holders six hundred thousand dollars of these bonds, and paid for them forty-five per cent., fifteen per cent. above the scale price, and sixteen thousand dollars, one-half the money set apart for the foreclosure, and assented to the terms of sale, and signed the contract with Stanton, Elliott, & Wilson, either directly or indirectly. This purchase gave them the control of the foreclosure suit. The trustees of all the other mortgages came into this court; a foreclosure and sale was decreed in May, 1866; the property was sold in separate parcels as heretofore set out, one million for the first division, three hundred thousand dollars for the Oskaloosa division, and eight hundred thousand on the first or land-grant construction mortgage, and nothing on the second construction or last mortgage. The Chicago, Rock Island and Pacific Railroad Company became the purchaser. The Chicago and Rock Island Company, as herein stated, paid the purchase-money, and thus all the title and claim of the holders of all classes of bonds became extinguished.

The sale was affirmed by a decree of this court, and an order
363 made that the trustees in the mortgages should give notice to the bondholders that if they did not claim their share of the foreclosure sale in two years from the day of sale their rights were to be barred, and the fund which otherwise belonged to them, was to be paid over to the other bondholders. This notice was duly given, and the claims of the bonds now represented by Foster and others as a lien on said road, or proceeds of sale, barred forever. These defendants refer to the records & proceedings of said foreclosure suit now before the court, and make them part of this answer. After the foreclosure sale the trustees of said mortgages authorized The Chicago, Rock Island and Pacific Railroad Company to distribute the proceeds of said sale, and the committee, or trustees of the stock and bond holders of the Mississippi and Missouri Company authorized the said Chicago, Rock Island and Pacific Railroad Company to deliver up to the assenting stock and bond holders of the Mississippi and Missouri Company their share of the proceeds of the private sale of said road by the resolutions of October 20th, and contract of November first, 1865. The said Chicago, Rock Island and Pacific Railroad Company, in making the distribution under the foreclosure sale, required the holders of the bonds, when paid their share of the proceeds, to surrender their bonds absolutely. To ena-

ble them to deliver to the holders of assenting bonds of the sale of November first, 1865, the trustees Stanton, Elliott, & Wilson, and the Union Trust Company, loaned to The Chicago, Rock Island and Pacific Railroad Company the book containing the assenting contract and list of bonds, and said company, upon due demand made, refuse to surrender the said book, and these defendants, in making answer as to the number of assenting stock and bond holders, do it upon information, and not upon direct knowledge. They pray that said Company may be ordered to produce said book, that when produced it may be made a part of this answer, and the Chicago and Rock Island Company ordered to surrender the same that it may be deposited with the trust company.

In the suit of Howard et als. vs. Davenport et als., The Chicago, Rock Island and Pacific Railroad Company, through Ebenezer Cook, their secretary, who was a witness, filed an account, and Ebenezer Cook declared, on oath, that it was wholly as it appeared; that The Chicago, Rock Island and Pacific Railroad Company had paid all the outstanding bonds, scrip, and interest on all the mortgage bonds of The Mississippi and Missouri Railroad Company, according to the scale provided by the terms of sale of October and November, 1865. If this account is true, then the plaintiffs' bonds, Foster and others, have been surrendered by the holders of The Chicago, Rock Island and Pacific Railroad Company, have assented to the sale, got their pro rata share of proceeds, and their bonds and c'upons extinguished. These defendants, on information and belief, answer that said account of payments was not true; and these defendants say that while they know some of the bondholders did not assent to the terms of sale, they aver that the number and amounts thereof do not exceed the following account:

List of non-assenting bonds and stock of Mississippi & Missouri Railroad, according to the last accounts by the bond and stock book, before same was taken by The Chicago, Rock Island & Pacific Railroad Company.

1st mortgage bonds	$17,000			
Income	18,000			
Interest	2,450			
		at scale		$37,450
2nd mortgage bonds	1,000	@ 80c.		800
364 Oskaloosa division bond	14,500			
Scrip	2,406 10			
	$16,906 10	@ 62½c.		10,566 31
Land-grant construction:				
1st May	$45,000			
Land grant construction, income	59,000			
	$104,000	@ 70c.		71,400
Land-grant const.:				
2nd mortgage	$23,500			
Scrip "	1,900			
	26,000	@ 30c.		7,920
Bonds and scrip	$174,500			
Total scale				$128,136 31

Assenting, 28,000 shares. Which last sum of money The Chicago, Rock Island and Pacific Railroad Company had on hand, if not paid out in redeeming the bonds not assenting.

Further answering, these defendants say that, when The Chicago, Rock Island and Pacific Railroad Company paid the assenting bondholders their share of the pro rata distribution, it retained interest on $4,750,487 from the 15th of December, 1865, to the first of March, 1866, making the sum of $83,133 52, which sum was retained to meet contingencies arising out of the Howard suit and non-assenting bondholders. As to the Howard suit, The Chicago, Rock Island and Pacific Railroad Company agreed to defend that without cost to the trustees, and this sum of $128,136 31 is to be added to the above sum, $83,133 52, making a total of $211,269 83, which is now in the pos'ession of The Chicago, Rock Island and Pacific Railroad Company, applicable, if they are entitled to it, to the claims of non-assenting bondholders, and more than sufficient to pay all the non-assenting bonds and interest. These defendants further say that, if The Chicago, Rock Island and Pacific Railroad Company have paid the pro rata share of any assenting bonds, and neglected to take up the past-due c'upons, or put them in circulation, they alone are liable therefor, and the holders have no claim in the fund now in court. Further answering, these defendants set up, as matter of law, against the claims of Foster and others—

1st. That they have no lien on the fund in court as mortgagees, the mortgage property being sold, the proceeds delivered to their trustees, and they must look solely to them for the money; their time has elapsed, their right barred.

2nd. They have no lien on the fund in court, because it was derived from the private sale of the assenting stock and bond holders, not from the foreclosure; and no bondholders has any right to any part of it, unless he assents thereto.

3rd. They have no right to come in as general creditors and divide the fund with Howard and others, because they, by superior diligence, must be first paid. They have no right to it as general creditors at all, because the fund was raised by the act of a large majority of assenting stock and bond holders for the benefit of all the bondholders and stockholders alike, and it was provided that it should be divided solely among those assenting. The bondholders, for whose benefit it was made, cannot, by refusing to assent to its terms, get more money
365 than those who did assent, and thus obtain more of the fund without such assent than those who did assent.

4th. The fund now in the hands of The Chicago, Rock Island and Pacific Railroad Company is sufficient to pay the whole claim of the plaintiffs, if they have any.

And these defendants, having fully answered said bill, pray the same may be dismissed.

GRANT AND SMITH,
Solicitors for Def ts.
BLAKELEY WILSON,
One of the Defendants.
JOHN WEBBER.

STATE OF NEW JERSEY,
County of Hudson, ss:

Be it known that, on the twelfth day of July, 1869, appeared before me, a notary public in and for said county and State, Blakeley Wilson,

one of the defendants in the foregoing answer named, & subscribed the same in my presence, and, being by me duly sworn, did declare on oath that the foregoing answer had been read to him and the contents thereof fully understood by him; that the facts stated in said answer as being with the knowledge of defendants he knows to be true, and those which are stated on information and belief he believes to be true.

In testimony whereof I have hereunto affixed my name and seal notarial the date above written.

[SEAL.] G. W. OLMSTED,
Notary Public, N. J.

STATE OF NEW YORK,
County of New York, ss:

Be it known that, on the 12th day of July, 1869, appeared before me, a notary public in and for said county and State, John Webber, to me personally known to be one of the defendants named in the foregoing answer, and subscribed his name thereto in my presence, and, being by me duly sworn, declared on oath that the foregoing answer had been read to him, and the contents thereof understood by him; that the facts therein stated as within the knowledge of the defendants are true, and those stated on information and belief he believes to be true.

In testimony whereof I have hereunto set my hand and seal notarial the date above written.

[SEAL.] EDWIN F. COREY,
Notary Public.

(Endorsed:) Filed July 21st, 1869.
GEORGE B. CORKHILL, *Clerk.*

And afterwards, to wit, on the sixth day of September, A. D. 1869, came the plaintiff in said consolidated bill, by Withrow and Wright, his solicitors, and filed in said clerk's office an amendment to said consolidated bill; which amendment is in the words & figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD AND JOHN WEBBER
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI & MISSOURI Railroad Company, The Chicago & Rock Island Railroad Company, The Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, j'r, John Elliott, & Blakeley Wilson, defendants.

Amendment to petitioners' consolidated bill.

366 To the judges of the circuit court of the United States for the district of Iowa:

Your orator, John V. McCollum, for amendment to the consolidated bill hereinbefore filed by your orator, and Frederick a Foster, J. Bardwell, and H. S. McComb, withdraws from said consolidated bill the paragraphs setting out the numbers and otherwise describing the bonds and c'upons owned by your orator, and in place of the allegations so set out in said paragraphs so withdrawn substitutes the following, to wit:

And your orator, John V. McCollum, represents that he is the owner and holder of the construction bonds of the Mississippi and Missouri Railroad Company, numbered 421, 423, 592, 778, 1453, 1905, 2531, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2747, each thereof being for the sum of one thousand dollars, with the interest c'upons appended to said bonds, numbered from sixteen to forty, inclusive.

Also, of the second mortgage construction bonds of said company, numbered 592 and 778, each for the sum of five hundred dollars, with the interest c'upons appended thereto, numbered from seven to forty, inclusive; also of the income bonds of said company, numbered 148, 152, 153, 154, 155, 156, 157, 158, 200, 235, 236, 237, 238, 240, 252, and those numbered from 159 to 198, both inclusive, each for the sum of one thousand dollars, with all of the interest c'upons appended thereto, being all of the c'upons, excepting the one maturing after the date of said bonds; that he is also the owner & holder of other c'upons than those attached to the bonds above described, and which were attached to the construction bonds of said Mississippi and Missouri Railroad Company, which are all past due & wholly unpaid; that said c'upons so owned by him, the numbers of the c'upons, and the number of the bonds from which they were detached, are as follows:

Number of c'upons owned.	Their number.	Number of the bonds from which they were detached.
50	1	2658 to 2707, both inclusive.
38	2	2908 to 2945, " "
55	3	2946 to 3000 " "
36	2	3001 " 3036 " "
64	4	3037 " 3100 " "
15	2	3101 " 3115 " "
96	5	3116 " 3211 " "
78	6	3212 " 3290 " "
79	7	3291 " 3370 " "
7	2	3371 " 3377 " "
33	8	3378 to 3400 " "
57	9	3401 " 3457 " "
50	10	4051 " 4100 " "
50	11	4101 " 4150 " "
50	12	4151 " 4200 " "
50	13	4201 " 4250 " "
800		

That no part of said bonds and cu'pons have been paid; that neither he nor any other person or corporation in his behalf has ever made, assented, or agreed to the arrangement or agreement hereinbefore recited for the payment of said bonds and c'upons by the payment of a less sum than that due upon the face thereof, and that he is now entitled
367 to be paid the full amount stipulated to be paid upon the face of said bonds and matured c'upons.

And your orator further shows that the following c'upons, viz, one c'upon detached from bond numbered 3397, fifty c'upons detached from bonds numbered 4051 to 4100, both inclusive; fifty c'upons detached from bonds numbered 4101 to 4150, both inclusive; fifty c'upons detached from bonds numbered 4201 to 4250, both inclusive, were by mistake not signed by the secretary of said railroad company; but your orator alleges that said c'upons and each of them were attached to valid and duly-executed construction bonds of said railroad company, of which Exhibit A of said consolidated bill is a copy; that the bonds from which said c'upons were detached had been duly executed, and were, at the time said c'upons were detached therefrom, valid, unpaid,

outstanding bonds of said railroad company; and that said c'upons have not, neither has any part thereof, been paid.

And your orator realleges all of the allegations set out and contained in said consolidated bill with the exception of those contained in the paragraphs first above mentioned; the purpose of this amendment being to incorporate in said bill the paragraphs last above set out in the place of those withdrawn from said bill.

And your orator repeats the prayer for relief set out in the original consolidated bill.

WITHROW AND WRIGHT,
With SCAMMON, McCAGG AND FULLER,
Solicitors for John V. McCollum.

(Endorsed:) Filed September 6th, 1869.
GEORGE B. CORKHILL, *Clerk.*

Afterwards, to wit, on the sixth day of September, A. D. 1869, came the plaintiffs in said consolidated bill, by Withrow and Wright, Scammon, McCagg and Fuller, Nourse and Kauffman, and Polk, Hubbell and Barcroft, their solicitors, and filed in said clerk's office a replication in the words and figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL. } Replication.

Replication of Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, complainants in the consolidated bill, to the answer herein of Mark Howard, John Webber, Joseph Young, Clark Durant, Thomas W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, and Christopher T. Lansing, plaintiffs in said original suit, and The Mississippi and Missouri Railroad Company, George W. Stanton, j'r, John Elliott, and Blakeley Wilson, defendants therein.

These complainants, reserving to themselves all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto say that said complain'ts will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these complainants, without this, that any other matter or thing whatsoever in the said answer contained mate-
368 rial and effectual in law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these complainants are and will be ready to aver and prove as this honorable court shall direct; and humbly pray as in and by their consolidated bill they have already prayed.

WITHROW AND WRIGHT,
Sol'rs for Fred. A. Foster, and with
SCAMMON, McCAGG & FULLER,
Sol'rs for Jno. V. McCollum.
POLK, HUBBELL & BARCROFT,
Sol'rs for J. Bardwell.
NOURSE AND KAUFFMAN,
Sol'rs for H. S. McComb.

(Endorsed:) Filed September 6th, 1869.
GEORGE B. CORKHILL, *Clerk.*

Afterwards, to wit, on the 14th day of September, A. D. 1869, came the defendant to said consolidated bill, The Chicago, Rock Island and Pacific Railroad Company, and filed in said clerk's office an answer, which is in the words and figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD AND JOHN WEBBER *vs.* THE CITY OF DAVENPORT, THE MISSISSIPPI and Missouri Railroad Company, The Chicago and Rock Island Railroad Company, The Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, j'r, John Elliott, and Blakeley Wilson.	Answer of The Chicago, Rock Island & Pacific R. R. Co. to consolidated bill.

The seperate answer of the defendant The Chicago, Rock Island and Pacific Railroad Company to the consolidated bill of Frederick A. Foster, Jno. V. McCollum, J. Bardwell, and H. S. McComb.

This defendant, reserving to itself any and all lawful exceptions to the errors and uncertainties of said bill, & for answer to so much thereof as it is advised it is material for it to make answer unto, says—

I. It admits that The Mississippi and Missouri Railroad Company did issue the several series of bonds & executed mortgages to secure the payment of the same as in said bill alleged; that the said several mortgages were foreclosed as in said bill alleged; that the railroad and other property of said railroad company was sold under and pursuant to the decree in said foreclosure proceeding; that The Chicago, Rock Island and Pacific Railroad Company, a corporation organized and existing under the laws of the State of Iowa, became the purchaser at this sale; and that this defendant, a corporation organized by the consolidation of said Chicago, Rock Island and Pacific Railroad Company of Iowa with the Chicago and Rock Island Railroad Company, a corporation created and existing under and by virtue of the laws of Illinois, became and is now owner of the same.

II. And this defendant, further answering, denies that the actual amount agreed to be paid for said property was the sum of five million five hundred thousand dollars, or any sum other than the sum of two million one hundred thousand dollars bid for the same at the master's sale; that the said two millions one hundred thousand dollars
369 was not paid; that the same was treated as a part and parcel of the sum of five millions five hundred thousand dollars, which it had been agreed should be paid for said property; that the trustees of said several mortgages never had in their own hands any of the moneys arising from said foreclosure sale; that all disbursements which have been made to the holders of bonds have been made by this defendant, and applied on the said sum of five millions five hundred thousand dollars; that this defendant never agreed to pay the sum of five millions five hundred thousand dollars for the tietle which it acquired to said property under and by virtue of said sale.

III. And this defendant, further answering, admits that, on or about the 20th of October, 1865, and prior to said foreclosure and sale, an

arrangement was entered into by and between some of the holders of the capital stock and bonds of each of the series which had been issued by the said Mississippi and Missouri Railroad Company as set out in said consolidated bill, a copy of which is also set out as an exhibit to the original bill of plaintiffs in this cause: but this defendant expressly alleges that neither The Mississippi and Missouri Railroad Company nor The Chicago and Rock Island Railroad Company were parties to or bound by said arrangement; that, on the first day of November, one thousand eight hundred and sixty-five, the said Mississippi and Missouri Railroad Company entered into a memorandum of understanding, had an agreement made with The Chicago and Rock Island Railroad Company, pursuant to the agreement between the bond & stock holders above mentioned, whereby The Mississippi and Missouri Railroad Company covenanted that it would, with all possible dispatch, cause the mortgage upon its line of road, its lands, depots, equipments, &c., &c., to be foreclosed, and its entire property, real and personal, sold, so that the purchaser should be able to transfer a perfect and unincumbered title to such incorporated company in Iowa as The Chicago and Rock Island Railroad Company may designate to become the purchaser and owner thereof; and it was covenanted upon the part of The Chicago and Rock Island Railroad Company, that it would, within one year from December first, 1865, and as much earlier as the property aforesaid should be sold and purchased, cause to be incorporated a company in the State of Iowa, under the general law of said State, which should purchase said property for the sum of five million five hundred thousand dollars, and complete said road to Des Moines, and make payment therefor in a manner therein agreed upon; that it was further covenanted by and between the parties that, unless The Mississippi and Missouri Railroad Company should have procured the foreclosure and sale aforesaid by the first day of December, 1866, said agreement should be null and void, unless The Chicago and Rock Island Railroad Company should agree to extend the time for such sale, all of which will more fully appear from a copy of said agreement referred to in the original bill filed herein and appended thereto as Exhibit B, to which ref'rence is made with the same effect as if the same was incorporated in the body of this answer; and this defendant alleges that the purchaser at said foreclosure sale did not receive a perfect and unincumbered title to the entire property, real and personal, of said Mississippi and Missouri Railroad Company; that, by reason of the said railroad company to keep and perform its covenant, The Chicago and Rock Island Railroad Company was discharged from the performance of its covenant to cause a company to be incorporated which should purchase the said property for the sum of five million five hundred thousand dollars; that
370 this defendant has never stipulated or agreed to pay said sum of five million five hundred thousand dollars for said property, but did, by the articles of consolidation, acquire such title to said property as the purchaser acquired at said sale, and assume the legal liabilities of such purchaser; that it did not, by virtue of such purchase, acquire full, free, and unincumbered tietle to such property, but has been compelled to expend and has expended large sums of money in perfecting its title to the same.

IV. And, for further answer, defendant says that it has no knowledge as to the allegations set out by said complainants severally touching their ownership of the bonds and c'upons upon which said consolidated bill is founded, and it therefore requires strict proof thereof; that, upon information and belief, it admits that said bonds and c'upons were never

surrendered under the agreement of the 20th day of October, 1865, above mentioned; but this defendant alleges that the holders of said bonds and c'upons were parties to said foreclosure and sale represented by their trustees; that they are entitled only to their pro rata share of the suns actually bid at said sale, amounting, in the aggregate, to two millions one hundred thousand dollars, and expressly denies any liability of this defendant to them or any of them, as well as the alleged rights of the complainants as holders of said bonds and c'upons, to payment of the same or any portion thereof out of the funds now in the hands of the receiver of this court.

And this defendant, having fully answered said bill, as fully as it is advised that it is neesesrary to make answer, prays that the same may be dismissed.

GEO. C. CAMPBELL,
Sol. for the C., R. I. & P. R. R. Co.

(Endorsed:) Filed September 14th, 1869.
GEORGE B. CORKHILL, *Clerk.*

And afterwards, to wit, on the twenty-second day of September, 1869, came the plaintiffs in said consolidated bill, by their solicitors, and filed in said clerk's office a replication to the answer of The Chicago, Rock Island and Pacific Railroad Company, which replication is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL. } In chancery.

The replication of Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, complainants, in the consolidated bill to the seperate answer of The Chicago, Rock Island and Pacific Railroad Company.

These replicants, saving and reserving unto themselves all and all manner of advantage & exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto; that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these replicants, without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these replicants are and will be ready to aver and prove as this
371 honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

WITHROW AND WRIGHT,
Sol's for Frederick A. Foster, and with
SCAMMON, McCAGG & FULLER,
Sol's for Jno. V. McCollum.
POLK, HUBBELL & BARCROFT,
Sol's for J. Bardwell.
NOURSE AND KAUFFMAN,
Sol's for H. S. McComb.

(Endorsed:) Filed September 22nd, 1869.
GEORGE B. CORKHILL, *Clerk.*

Afterwards, to wit, on the twenty-ninth day of October, A. D. 1869, came all the parties to said bill, and to the answer of Mark Howard and others thereunto, and filed in said clerk's office a stipulation, which is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS *vs.* THE CITY OF DAVENPORT & OTHERS. } Consolidated bill of Foster & others.

The plaintiff John V. McCollom, having amended his consolidated bill so as to give an accurate description of his bonds and c'upons, and to allege that certain c'upons not signed belonged to bonds signed, it is agreed that the answer of defendants already filed shall be treated as a denial of all the allegations of said amendment in the same manner as if incorporated in the original, and all the defences set up in said answer shall apply to said amendment.

WITHROW AND WRIGHT,
For Jno. V. McCollum.
GRANT AND SMITH,
For the Defendants who have answered.

(Endorsed:) Filed October 29, 1869.
GEORGE B. CORKHILL, *Clerk.*

And afterwards, to wit, on the twenty-ninth day of October, 1869, came the defendants to said consolidated bill, by Grant, their solicitor, and filed in said clerk's office a further and additional answer; which answer is in the words and figures following, to wit:

United States circuit court, district of Ohio.

MARK HOWARD & ALS. *ag't* CITY OF DAVENPORT & ALS. } Intervention of Foster & als.

Further and additional answer of Mark Howard and others to the consolidated bill of Frederick A. Foster and others.

These defendants, for further answer to said bill, say that The Chicago, Rock Island and Pacific Railroad Company not only are the owners of said bonds & c'upons claimed by Foster, McComb, Bardwell, and McCollum, but they have in writing agreed to pay the same, and
372 these defendants ask that this court, in any final order as to such of said bonds as the parties may show that they have title, the said Chicago, Rock Island and Pacific Railroad Company may be ordered to pay the same, as well as the costs arising out of this bill of intervention.

GRANT,
For def'ts Howard and others.

(Endorsed:) Filed October 29, 1869.
GEORGE B. CORKHILL, *Clerk.*

And on the same day, to wit, on the 29th day of October, A. D. 1869,

came the defendants to said consolidated bill, by Grant and Rogers, their solicitors, and filed in said clerk's office a motion, which is in the words and figures following to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
ag't
THE CITY OF DAVENPORT AND OTHERS.

The plaintiffs Mark Howard and others, now come and move the court to distribute the whole fund under the final decree of this court and the mandate of the supreme court affirming the same, notwithstanding the interventions of Frederick A. Foster and others, and anything alleged or proved in their intervening cause.

GRANT & SMITH, *for Pl'ffs.*

And on the same day, to wit, the 29th day of October, 1869, came the plaintiffs in said consolidated bill, and the defendants joining in the answer of Mark Howard and others thereunto by their several solicitors, and filed in said clerk's office stipulations in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL.

It is stipulated by and between the solicitors of Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, complainants in the consolidated bill filed in the above-entitled cause, and the solicitors of the complainants and defendants in said original cause who have answered said consolidated bill, that said Foster and his co-complainants will, on or before the 20th day of September, 1869, procure a verified, full, true, and perfect copy of the "agreement between the stock and bond holders of the Mississippi and Missouri Railroad Company and George W. Stanton, jr., John Elliott, and Blakeley Wilson, committee," and of the books setting out the record made by the Union Trust Company of New York, relating to the business transacted by said company in the matter of the surrender of the bonds and stock of the Mississippi and Missouri Railroad Company; that the parties will, within four days after said date, commence to take depositions upon the oral examination of such witness, as may be produced by them respectively; that said depositions shall be taken before an officer in the city of New York, as shall be agreed upon between the parties; that the party calling the witness' shall give to the adverse party twenty-four
hours' notice of the name of each witness and of the time of
373 commencing his examination; that the taking of such depositions shall be diligently continued until each of the parties has completed the depositions he wishes to take; that the copy of the contract and books above mentioned shall be taken by counsel to New York, and shall be open to the inspection of either party and of the witnesses they produce; that the depositions so taken may, subject to exceptions for competency or relevancy, be read on the hearing of the issues joined on the allegations of said consolidated bill, which is hereby set for the

October term, 1868, of said court, subject to the right of either party to apply for a continuance for cause shown. Either party may amend their pleadings by furnishing adverse party a copy.

GRANT AND SMITH,
For Defendants who have answered.
WITHROW AND WRIGHT,
For Foster et al.

SEPTEMBER 7TH, 1868.

(Endorsed:) Filed October 29, 1869.
GEORGE B. CORKHILL, *Clerk.*

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL.

It is stipulated between the complainants in the consolidated bill of Frederick A. Foster et al. and the defendants who have answered said bill, except The Chicago, Rock Island and Pacific Railroad Company, that the following depositions and documents may be read in evidence on the trial of the issues joined on the allegations of said consolidated bill:

1. The deposition of E. Cook, read on the hearing of the original bill; but the defendants shall have the right to also read the affidavit of E. Cook, showing how the last interrogatory in said deposition was propounded & answered, and explaining said answer.
2. The depositions of John Elliott and Blakeley Wilson, read on the hearing of the original cause.
3. The stipulation of the Stanton committee and the plaintiffs, in the original cause, set out on page 28 of the transcript of record in case number 319, Supreme Court of the United States, December term, 1868.
4. The record and depositions read on the trial of the cause of Durant et al. vs. The Mississippi and Missouri Railroad Company et al.
5. "Proceedings of a meeting of bond and stockholders of the Mississippi and Missouri Railroad Company, held October 18th, 1865, and statement of General John A. Dix," being the paper referred to in plaintiff's bill in the original cause as Exhibit A.
6. "Memorandum of understanding had, and agreement made, this first day of November, one thousand eight hundred and sixty-five, between The Mississippi and Missouri Railroad Company and The Chicago and Rock Island Railroad Company, in pursuance of certain resolusions passed by a meeting of the bondholders and stockholders of the Mississippi and Missouri Railroad Company, held in the city of New York, on the 20th day of October, 1865," being the paper referred to in the said bill as Exhibit B.
7. "Memorandum of an agreement made this first day of November, A. D. one thousand eight hundred and sixty-five, between The Mississippi and Missouri Railroad Company of the first part, and The
374 Chicago and Rock Island Railroad Company of the second part," being the paper referred to in said bill as Exhibit C.
8. The articles of incorporation of The Mississippi and Missouri Railroad Company.
9. "Articles of consolidation made and entered into on the 20th day

of August, one thousand eight hundred and sixty-six, by and between The Chicago and Rock Island Railroad Company of the first part, and The Chicago, Rock Island and Pacific Railroad Company of the second part."

10. The notice of the Stanton committee to the bond and stock holders of the Mississippi and Missouri Railroad Company, dated December 20th, 1865, and referred to in the original bill in said cause as Exhibit E.

11. The verified copy of the agreement between the stockholders and bondholders of the Mississippi and Missouri Railroad Company and George W. Stanton, jr., John Elliott, and Blakeley Wilson, committee, delivered to the defendants' solicitors in compliance with the stipulation of 9th September, A. D. 1869, being the document referred to in said original bill as Exhibit D.

12. The copy of the record of the Union Trust Company of New York, showing the transactions of said company relating to the surrender of the bonds of the Mississippi and Missouri Railroad Company, and delivered to the defendants' solicitors in compliance with said stipulation.

13. Said depositions and documents shall be subject to any objections which either party could interpose to the reading of the same, or of any part thereof, on the ground of immateriality, irrelivancy, or incompetency, had the same been taken by the parties to said consolidated bill to be read on the hearing thereof.

WITHROW AND WRIGHT,
For the Complainants.
GRANT AND SMITH,
For Mark Howard & others.

(Endorsed:) Filed 29th Oct., 1869.
GEORGE B. CORKHILL, *Clerk.*

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

It is stipulated between the plaintiff John V. McCollum, in the consolidated bill filed in the above-entitled cause, and the defendants who have answered said bill, except The Chicago, Rock Island and Pacific Railroad Company, that, on the hearing of the issues joined on the allegations of said consolidated bill, the following facts shall be considered as established by the evidence:

I. That at a meeting of the board of directors of the Mississippi and Missouri Railroad Company, held at the office of said company in the city of New York, on the thirty-first day of December, 1863, the following proceedings were had, as is shown by the records of said board:

NEW YORK, *Dec. 21st*, 1863.

At a meeting of the directors of the Mississippi and Missouri Railroad Company, held at their office this day—

Present, John A. Dix, Hyram Price, Thomas C. Durant, Charles Tuttle, G. T. M. Davis—

The executive committee laid before the board the modified

375 proposition of The Chicago and Rock Island Railroad Co. for the loan to this company of $5,500,000, whereupon the following proceedings were had; which modified proposal was as follows:

* * * * * * *

Resolved by the Chicago & Rock Island Railroad Company, That this company will purchase eight hundred thousand dollars of the seven per cent. land-grant bonds of The Mississippi and Missouri Railroad Company at the rate of sixty-two and one-half cents upon the dollar of their par value, and pay for the same as the said company may require the money; and that The Mississippi and Missouri Railroad Company have the right to repurchase the same at any time within three years from the time the said bonds shall be respectively so purchased, & at the same price, with interest at seven per cent. per annum upon the sum paid by this company therefor; and whenever the money paid for said bonds by The Chicago & Rock Island *Rock Island* Railroad Company shall have been reimbursed by The Mississippi and Missouri Railroad Company, with interest thereon at seven per cent. thereupon, the said bonds shall be delivered to the last-named company, with all the c'upons which fell due after their purchase by the former company.

Adopted.

Resolved, That the executive committee be authorized to make a contract with The Chicago and Rock Island Railroad Company to carry out the foregoing agreement.

Adopted.

* * * * * * *

II. That, pursuant to such proposition, and on the 16th day of January, A. D. 1864, the said Chicago and Rock Island Railroad Company and the said Mississippi and Missouri Railroad Company entered into articles of agreement, containing, among others, the following covenants and stipulations:

Articles of agreement made this sixteenth day of January, one thousand eight hundred and sixty-four, between The Chicago and Rock Island Railroad Company, parties of the first part, and The Mississippi and Missouri Railroad Company, party of the second part.

Whereas it is the mutual purpose of the said parties of the first and second part' to unite in a running arrangement to include the transportation of all freights and passengers from and to any and every station on the railroad of each of said companies to and from any and every station on the railroad of the other of said companies, and to continue for the period of twenty years:

Now these presents witnesseth that the said parties of the first and second part', in consideration of the premises, and for and in consideration of the mutual agreements hereinafter contained, do mutually agree, each with the other, as follows:

ARTICLE FIRST. In order to enable the said parties of the second part to construct their railroad from Grinnell westward with greater rapidity than they otherwise might do, the said parties of the first part shall and will purchase from the said parties of the second part their seven per cent. land-grant bonds to the amount at par of eight hundred thousand dollars, for and at the price or rate of sixty-two and one-half cents upon the nominal or par value thereof, payable as follows: Seventy thousand dollars of the purchase-money to be paid immediately on the execution of these presents, and a further sum, not exceeding twenty thousand dollars in each month for the period of four months

then next following, and a further sum not exceeding one
376 hundred thousand dollars in each month after the expiration of said four months, until the whole purchase-money shall be paid; which money so received the said parties of the second part shall and will diligently apply and use to and for the construction of their said railroad west of Grinnell, and the purchase of material therefor, and to or for no other use or purpose whatsoever; and they shall not be entitled to demand or have such monthly payments to any larger amount or any faster than the money shall be requisite for the said special purpose; and the said parties of the second part shall and will deliver to the said parties of the first part the said bonds, from time to time, in such quantities as the said parties of the first part shall so pay the price therefor respectively.

ARTICLE SECOND. The said parties of the second part shall and will pay to the said parties of the first part, on every first day of July and January after the date hereof, a sum equal to the interest accrued on each such day on all moneys paid by the said parties of the first part to the said parties of the second part under and in pursuance of the first article of these presents, to be computed from the time said moneys were so paid at the rate of seven per cent. per annum; and upon each half-yearly payment being so made, the said parties of the first part shall and will deliver to the said parties of the second part all c'upons of the said bonds which shall have matured or become payable during the half year then last past, which half-yearly payments and deliveries shall continue from time to time as to all said bonds not repurchased, as in the third article of these presents provided for, until the expiration of the respective periods provided for by said third article.

ARTICLE THIRD. If the half yearly payments agreed upon in the second article of these presents shall be made as therein provided, then, and in such case, the parties of the first part shall not and will not sell or dispose of any of said bonds for the period of three years next following the delivery of the same to and the payment for the same by them, respectively, under and in pursuance of the first article of these presents; and during such several periods of three years the said parties of the second part shall have the right and option to repurchase from the said parties of the first part all or any of said bonds, at any time within the period of three years next following the said delivery of and payment for the same identical bonds provided for in the first article of these presents, at and for the rate and price of sixty-two and one-half cents upon the nominal or par value thereof, with interest from the then next previous first day of January or July, at seven per cent. per annum.

* * * * * * *

In witness whereof the said parties of the first and second part' have caused these presents to be executed under their respective corporate seals, and to be subscribed by their respective presidents and secretarys, the day and year first above written.

(Signed) C. W. DURANT,
Pres't Ch. R. I. R. R. Co.
JOHN A. DIX,
Pres't Miss. & Mo. R. R. Co.

Sealed and delivered in the presence of—
FRANCIS H. TOWS,
[SEAL.] *Sec'y Chicago & R. I. R. R. Co.*
EBENEZER COOK,
Sec'y Miss. & Mo. R. R. Co.

377 III. That, in the performance of said agreement, the said Chicago and Rock Island Railroad Company did pay to the said Mississippi and Missouri Railroad Company the sum of five hundred thousand dollars, and received, as in said agreement provided, eight hundred of the land-grant construction bonds of said company, each for the sum of one thousand dollars, with c'upons attached for interest at seven per cent., payable on the first days of May and November in each year.

IV. That at a meeting of the executive committee of the board of directors of the Mississippi and Missouri Railroad Company, held in the city of New York, on the 21st days of December, A. D. 1865, the following proceedings were had:

NEW YORK, *Dec.* 23*d*, 1865.

At a meeting of the Mississippi & Missouri Railroad held this day:

Whereas, under the agreement between this company and The Chicago and Rock Island Railroad Company, dated the 19th day of January, 1864, a default has been made in paying the interest on the loan therein mentioned; now, in order to prevent any question as to the right of the said Chicago and Rock Island Railroad Company to said bonds in the said agreement, sold to said company—

Resolved, That the president and treasurer of this company execute to the said company a release, under the seal of the company, of all equity of redemption of the said bonds, declaring the sale of said bonds to said Chicago and Rock Island Railroad Company to be absolute from this date from any obligation thereon to this company.

(Signed) JOHN A. DIX, *Pres't.*
JOHN ELLIOTT,
B. WILSON,
G. W. STANTON, JR.,
Executive Committee.
GEO. T. M. DAVIS.

V. That at a meeting of the executive committee of the board of directors of the Chicago and Rock Island Railroad Company, held in the City of New York, on the twenty-third day of December, A. D. 1865, the following, among other proceedings, were had:

NEW YORK, *December* 23, 1865.

At a meeting of the executive committee of the Chicago and Rock Island Railroad Company held this day—

Present, C. W. Durant, E. W. Dunham, David Dows, T. T. Sturges—

* * * * * * *

The treasurer stated that he had received from The Mississippi and Missouri Railroad Company a release of the equity of the redemption of the eight hundred land grant bonds held by this company under a contract between the two companies, dated January 16th, 1865, and, on motion, the release was accepted and ordered placed on file, and is as follows:

In pursuance of the resolution of the board of directors of the Mississippi and Missouri Railroad Company, passed December 21st, 1865, the said company doth, for value received, hereby release The Chicago and Rock Island Railroad Company of and from all right of The Mississippi and Missouri Railroad Company to eight hundred bonds of one thousand dollars each, sold to it by an agreement between the two companies, dated January 16th, 1864, and to any right or equity of redemption of the same, and does hereby declare and agree that the said

Chicago & Rock Island Railroad Company is the absolute owner
378 of the same from this date free from any obligation thereon to this company.

In witness whereof The Mississippi and Missouri Railroad Company hath caused its corporate seal to be affixed hereunto and the signatures of the president and treasurer thereof to be hereunto subscribed, this 21st day of December, 1865.

JOHN A. DIX, *Pres't.*

Whereas, at a meeting of the stock & bond holders of the Mississippi and Missouri Railroad Company, held at New York, on the 20th day of October, 1865, an agreement was made for the foreclosure and sale of the mortgages upon the property of said company by the mutual assent of the parties thereto; and whereas, by a resolution of said meeting, George W. Stanton, jr., John Elliott, and Blakeley Wilson were appointed a committee to act for the parties aforesaid; and whereas said committee have made an arrangement with the Union Trust Company of New York to receive and receipt for said securities so deposited with the committee, and the agreement proposed between said committee and the stock and bond holders, and the form of certificate proposed to be given by the Union Trust Company is on the table:

Resolved, That the treasurer of this company be authorized to deposit eight hundred land-grant bonds owned by this company aforesaid under the agreement referred to at such time as in his discretion shall be most advisable to effect the object proposed and adopted at the meeting aforesaid.

Adopted.

On motion the committee adjou'n'd.

VI. That, at a meeting of the executive committee of the board of directors of the Mississippi and Missouri Railroad Company, held at the city of New York, on the 26th day of December, A. D. 1865, the following resolution was passed:

NEW YORK, *December 26th*, 1865.

At a meeting of the executive committee of the Mississippi and Missouri Railroad Company held this day—

Present, John A. Dix, George W. Stanton, jr., B. Wilson, and John Elliott—

It was, on motion, resolved that this committee deem it important, in order to assure the delivery of bonds of the Mississippi and Missouri Railroad to the Union Trust Company by parties outside the Mississippi and Missouri and the Chicago and Rock Island Railroad Companies, that The Chicago and Rock Island Railroad Company deposit the bonds held by them with as little delay as possible, and that said company be requested to do so.

VII. That thereafter and on the 21st day of January, A. D. 1866, the said treasurer of the said Chicago and Rock Island Railroad Company signed the name of the said Company to the agreement between the bond and stock holders of the Mississippi and Missouri Railroad Company and George W. Stanton, jr., & John Elliott, and Blakeley Wilson, committee, generally known as the Peter Meyers contract, as follows: "Chicago, Rock Island and Pacific Railroad Company, by E. W. Dunham, treasurer, land-grant first mortgage bonds, $800, " as will more clearly appear by the copy of said contract, in evidence, to which for greater certainty ref'rence is hereby made; that after the release and prior to the signing of said agreement, and without notice to the

said committee or to the board of directors of the Mississippi and
379 Missouri Railroad Company, the said E. W. Dunham detached therefrom the c'upons maturing on the eighth day of November, A. D. 1864.

VIII. That the detached c'upons described in the consolidated bill as amended, alleged to be owned by the said John V. McCollum, with the exception of the c'upons detached from construction bonds numbered twenty-six 98, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, and 2707, were detached from the said bonds so numbered.

IX. That, after the said bonds were so surrendered, the said John V. McCollum purchased said c'upons of John F. Tracy, who was agent of the Chicago, Rock Island and Pacific Railroad Company; that the said Tracy did not disclose the name of his principal or that he was acting as agent in said sale; that the said McCollum is a relative by marriage of the said Tracy—brother-in law; that the said McCollum purchased said c'upons on or about the 27th day of March, A. D. 1869, and executed his negotiable promissory note for the price agreed to be paid therefor, which was fifty per cent. of the amount due thereon, which note was payable with interest three years after said date; that said note is now held by the said Tracy, who is president of the said railroad company, and for the use of said company.

X. That the date of the release of the equity of redemption in said 800 bonds by the said Mississippi and Missouri Railroad Company, the said railroad company had failed to pay the installment of interest due on the loan of $500,000, on the first day of January, 1865, and the same remained unpaid and was unpaid when the release of the right to redeem the bonds was accepted.

XI. It is further stipulated that any ruling or decision which may be made by the court touching the c'upons severed from the 800 bonds as hereinbefore recited shall embrace and apply to all several c'upons claimed by the said John V. McCollum.

XII. It is further stipulated that David Dows was a director in the Chicago & Rock Island Railroad at the time of the transaction referred to by Frederick A. Foster in his deposition.

WITHROW AND WRIGHT,
For Complainants.
GRANT, *for Howard & others.*

(Endorsed:) Filed October 29th, 1869.
GEORGE B. CORKHILL, *Clerk.*

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL.

It is stipulated between the complainants in the consolidated bill of Frederick A. Foster et al. in the above-entitled cause, and defendants who have answered thereto, except The Chicago, Rock Island and Pacific Railroad Company, that, upon the hearing of the issues joined on the allegations of said consolidated bill, the following facts shall be considered established by the evidence:

1. That the bonds claimed by the complainant McCollum in the said consolidated bill were, at the time of the sale of the property of the Mis-

sissippi and Missouri Railroad Company, and for a long time prior thereto, the property of one Thomas C. Durant; that the said Durant continued to hold said bonds until after the execution of the contract of August first, 1866, between the Stanton committee and The Chicago, Rock Island and Pacific Railroad Company; that, after the exe-
380 cution of said contract, and before the confirmation of the sale made under the foreclosure decree in the case of Durant et al. vs. The Misslssippi & Missouri Railroad Company et al., the said Durant threatened to delay the transfer of the property of said company in accordance with the terms of the contract of November 1st, 1865, and the said foreclosure sale, by resisting the confirmation of said sale and by other means, because he was excluded by the notice of committee from assenting to P. Meyers' contract; that, at the request of the said Chicago, Rock Island and Pacific Railroad Company, one David Dows, then a director in said company, purchased said bonds, one of the inducements to the purchaser being a desire on the part of said Dows, and of said railroad company, to prevent any such hindrance and delay; that, after the confirmation of said sale, the said Chicago, Rock Island and Pacific Railroad Company purchased said bonds of the said Dows, and paid him therefor the sum of fifty-four thousand two hundred dollars

2. That the said railroad company continued to own said bonds until the date of the sale of the several c'upons maturing November 1st, 1864, to John V. McCollum, as set out in another stipulation this day signed by the parties; that said bonds when then sold, *when then sold*, by John F. Tracy to the said McCollum, the said sale being a part of the same transaction in which said c'upons were sold.

WITHROW AND WRIGHT,
For Complainants.
GRANT AND SMITH,
For Mark Howard & others.

(Endorsed:) Filed October 29th, 1869.
GEORGE B. CORKHILL, *Clerk.*

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL.

It is stipulated by and between the complainants in the consolidated bill of Frederick A. Foster et al. filed in the above-entitled cause, and the defendants who have answered said bill, except The Chicago, Rock Island and Pacific Railroad Company, that, upon the trial of the issues joined upon the allegations of said consolidated bill, the following facts shall be considered as established by the evidence:

1. That the trustees in the first-mortgage land-grant bonds, executed by The Mississippi & Missouri Railroad Company, after the sale in foreclosure in the case of Durant et al. vs The Mississippi & Missouri Railroad Company et al., appointed The Chicago, Rock Island and Pacific Railroad Company their agent to pay the non-assenting bondholders twenty per cent. of the amount due on their bonds.

2. That E. W. Dunham resigned the trusteeship in the several mortgages in which he was trustee, and which Francis H. Tows, the secre-

tary of Chicago, Rock Island and Pacific Railroad Company, was appointed to fill the vacancy.

GRANT, *for Howard & al.*
WITHROW AND WRIGHT,
For Complainant.
GRANT & SMITH,
For Howard & others.

(Endorsed:) Filed October 29th, 1869.
GEORGE B. CORKHILL, *Clerk.*

381 U. S. circuit court, district of Iowa.

HOWARD & OTHERS
vs.
DAVENPORT & OTHERS.

It is admitted that The Chicago & Rock Island Railroad Company purchased the bonds known as the James bonds, being about $600,000, second-construction mortgage bonds, and paid him 45 per cent of their par value, and sixteen thousand dollars besides, being one-half of the sum set apart for foreclosure expenses. This purchase was made between February and April, 1866, and after James had commenced the foreclosure proceedings in the name of defendant and others, trustees of the second-construction mortgage.

GRANT & ROGERS,
For Howard and others who have answered title of intervenors, not including C., R. I. & P. R. R. Co.
WITHROW & WRIGHT,
For Complainants.

(Endorsed:) Filed 29th Oct., 1869.

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL.

It is stipulated by and between the complainants in the consolidated bill of Frederick A. Foster et al. and the defendants who have answered said bill, except The Chicago, Rock Island, and Pacific Railroad Company, that the bonds, c'upons, and scrip described in the consolidated bill & alleged to be owned by the complainants are in the possession of said complainants, the purpose of this stipulation being to admit in favor of said complainants all that could be established in their favor by their actual production on the hearing of this cause; this agreement is made to save necessity of putting same in the record on appeal.

GRANT & SMITH,
Att'ys for Mark Howard and others who have answered.

(Endorsed:) Filed 29th Oct., 1869.
GEORGE B. CORKHILL, *Clerk.*

In the circuit court of the United States for the district of Iowa.

JOHN WEBBER ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

It is stipulated between the complainants in the consolidated bill of Frederick A. Foster et al. and the defendants who have answered said bill, except The Chicago, Rock Island and Pacific Railroad Company, that, upon the hearing of the issues joined on the allegations of said consolidated bill, the following facts shall be considered as established by the evidence:

That when the certificates issued by the Union Trust Company were surrendered to said Chicago, Rock Island and Pacific Railroad Company in exchange for the bonds of said company, it issued to the holders of said certificates for interest stipulated to be paid scrip in the following form:

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OFFICE CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD COMPANY,
No. 13 William Street, New York, , 186 .

No. 246.

This agreement witnesseth that surrendered to this company receipts of the Union Trust Company, entitling to $ of the bonds of The Chicago, Rock Island and Pacific Railroad Company, and interest thereon at seven per cent. per annum, from 1st December, 1865, to 1st September, 1866. The bonds for the principal sum have been delivered, and the interest, or such portion thereof as may not be required to pay costs and expenses as provided by agreement between the holders of bonds and stock of the Mississippi and Missouri Railroad Company & George W. Stanton, jr., John Elliott, & B. Wilson, committee, will be paid to the holder hereof, whenever, in the opinion of J. F. Tracy, Joseph E. Sheffield, and W. W. Phelps, or any two of them, it shall be right & proper so to do.

, *Secretary.*

[U. S. revenue affixed, 5c.]

That, after the said scrip was issued, the holders of the same, with one exception, returned the same to said railroad company before the happening of the contingency on which it was payable, and surrendered the same upon receiving from the company a sum equal to six months' interest upon the certificate; that upon receiving such sums the holders severally returned the certificates to said company, and endorsed on the back thereof a receipt in the following form:

Received, New York, , 1866, , in full for the within agreement.

(Signed) ——— ———.

That all of said scrip has been returned to the said railroad company, exept one for interest on $9,450, which is yet outstanding; and that many of said certificates had been endorsed prior to their return, & been returned by their indorsers.

WITHROW AND WRIGHT,
For Complainants.
GRANT & SMITH,
For Mark Howard & others named.

(Endorsed:) Filed Oct. 29, 1869.
GEORGE B. CORKHILL, *Clerk.*

In U. S. circuit court, district of Iowa. Oct. term, 1869.

HOWARD AND ALS. *ag't* DAVENPORT AND OTHERS. } Intervention of Foster & als.

James Grant, attorney for Howard and others, makes oath that his clients cannot proceed to trial without the evidence of John H. Baker, for the following reasons:

Facts which I expect to prove by J. H. Baker:

1st. That the books of Treasurer Davis, and of the executive committee of M. and M. R. R. were left in the office of The Chicago & Rock Island R. R. Co., in a safe, and a key to the safe left there, & while there the books were taken out by some person in the Rock Island Company's office, and refused to be returned on Baker's request.

383 2. That money was left by the officers of the Chicago and Rock Island R. R., received from earnings of Miss. & Mo. Railroad, or otherwise, with the Corn Exchange Bank, to pay the interest on the November, 1864, as well as January, 1865, c'upons, of the bonds of the the Miss. and Mo. Company.

3. That the balance of the c'upons referred to by Mr. Davis as paid by him, were held over by the holders, because the money deposited was not sufficient, and that the $14,000 of c'upons referred to by Davis in his deposition, as paid by him, were such c'upons left over above what were paid by the Corn Exchange Bank.

4. That the $35,000 item in the account rendered by The Chicago and Rock Island Railroad Company, page , of printed record in the U. S. Supreme Court, was for one year's interest on the $500,000 loan to Miss. and Mo. Co. by Chicago and Rock Island Railroad Company, in hypothecation of 800,000 dollars, seven per cent. 1st land-grant bonds, and that the 28,000 of c'upons sued for in McCollum's name are part & parcel of said item of $35,000.

5. That the item of $5,252 50, referred to in said account as unpaid c'upons for January, 1865, in the first mortgage bonds, was part and parcel of the c'upons referred to by Mr. Davis in his deposition, as paid by him.

That, in company with Mr. Withrow, I went to New York in September to take the depositions of Baker & others; that we took all the other depositions, and when ready to take Baker's he was unwell, and we could not find him. His residence was in , near New York, with his father-in-law. His place of business in New York. That we inquired at his place of business; we *was* told that he was up at his residence. The near approach of this court rendered it impossible for us to wait longer to take his deposition. I know of no other witness by whom the same facts can be proved.

JAMES GRANT.

It is agreed that this affidavit may be read as proof of the facts which def'ts expect to prove by witness.

WITHROW AND WRIGHT,
For Complainants.

(Endorsed:) Filed Oct. 29, 1869.
GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the 29th day of October, A. D. 1869, came the parties by their solicitors, & filed in said clerk's office certain depositions of John Elliott, George W. Stanton, jr., Blakeley Wilson, G. T. M. Davis, Frederick A. Foster, and H. S. McComb; which depositions are in the words & figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD & JOHN WEBBER
ag't
THE CITY OF DAVENPORT, THE MISSISSIPPI and Missouri Railroad Company, The Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Wilson.

Depositions of John Elliott, George W. Stanton, jr., Blakeley Wilson, Frederick A. Foster, G. T. M. Davis, and Henry A. McComb, taken in the city of New York, in the State of New York, on the
384 several days therein mentioned, before Thomas J. MacVey, a notary public in and for the county and city of New York, in accordance with and pursuant to the stipulation of the complainants to the consolidated bill of Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, and the defendants who have answered said bill, except The Chicago, Rock Island and Pacific Railroad Company, a copy of which stipulation is hereto appended, the said complainants appearing by Withrow and Wright, their solicitors, and the said defendants, by Grant and Smith, and John N. Rogers, their solicitors.

[The stipulation of Foster & al., and the defendants above referred to, is here ommitted, as a full, true, and complete copy thereof is to be found on page 91 [372] of this transcript.]

In the circuit court of the United States, district of Iowa.

MARK HOWARD AND JOHN WEBBER
ag't
THE CITY OF DAVENPORT, THE MISSISSIPPI and Missouri Railroad Company, The Chicago, Rock Island & Pacific Railroad Company George W. Stanton, jr., John Elliott, and Blakeley Wilson.

SEPTEMBER 24*th* 1869, *at ten a. m.*

Examination of John Elliott, on behalf of Foster and als., petitioners:

I am the John Elliott who was a member of the committee appointed by the bond and stock holders of the Mississippi and Missouri Railroad Company at a meeting held in the city of New York, on the twentieth day of October, 1865, to arrange the mode and terms of payment and details of sale of that road; the other members of the committee were George W. Stanton, jr., and Blakely Wilson; said committee superintended the foreclosure of the mortgages then outstanding upon the railroad of the said company; they superintended the sale of said property under the decree of foreclosure; we superintended the sale and were present to protect the interest of the bond and stock holders at the sale. There was an agreement entered into by The Mississippi and Mis-

souri Railroad Company with The Chicago and Rock Island Railroad Company to sell the road.

(The attention of witness is called to paper marked Exhibit B, on page 96 of transcript of record in cause 319 of the Supreme court of the United States, December term, 1868.)

That was the agreement that I refer to. There was an agreement entered into between the committee and The Chicago, Rock Island and Pacific Railroad Company as to the sale of the property, as follows:

"Agreement between Ebenezer Cook, John F. Tracy, David Dows, Thomas T. Sturges, and Oliver Charleek, of the first part, and George W. Stanton, jr., John Elliott, and Blakely Wilson, committee, of the second part.

"The parties of the first part jointly and severally agree and undertake that The Chicago, Rock Island and Pacific Railroad Company shall purchase, if it can be purchased at a sum not exceeding five millions of dollars, the property of The Mississippi and Missouri Railroad
385 Company, its various divisions, franchises, etc., at the sale under a decree of foreclosure of the United States circuit court for the district of Iowa, and shall hold it after such purchase in trust, to carry out in good faith certain articles of agreement made by the said Mississippi and Missouri Railroad Company, dated November first, A. D. 1865, and particularly that the said parties of the second part, as provided in the last-mentioned agreement, shall receive five millions five hundred thousand dollars, in bonds, either of the said Chicago, Rock Island and Pacific Railroad Company, whose payment shall be guaranteed by The Chicago and Rock Island Railroad Company in some form or way that shall legally bind the said Chicago and Rock Island Railroad Company, or in bonds of a railroad company which shall be formed by the consolidation of said Chicago, Rock Island and Pacific Railroad Company with The Chicago and Rock Island Railroad Company.

"And further, the said parties of the first part guarantee, promise, and agree, to and with the parties of the second part, that if, at the expiration of three months from the ninth day of July, 1866, the said parties of the second part have not received, whether from legal delay, impossibility, or other cause, bonds of the par value of five and one-half million of dollars, of a kind and description above alluded to, and fully mentioned and described in the agreement between The Mississippi and Missouri Railroad Company and The Chicago and Rock Island Railroad Company, as aforesaid, that then the said Chicago, Rock Island and Pacific Railroad Company shall, at its own expense, convey to the said parties of the second part all the property and franchises of The Mississippi and Missouri Railroad Company, as conveyed to the said Chicago, Rock Island and Pacific Railroad Company, by the deed of the master of the sale of foreclosure aforesaid.

"The consideration of this guarantee is that the said parties of the second part agrees, at the request of the parties of the first part, not to bid at the said foreclosure sale of The Mississippi and Missouri Railroad Company.

"In witness whereof, all parties have hereunto put their hands, the third day of July, 1866, in the city of New York.

"EBENEZER COOK.
"JOHN F. TRACY.
"DAVID DOUWS.
"THOMAS F. STURGES.

"In consideration of one dollar, and the agreement of Messrs. Stanton, Elliott, and Wilson, committee, not to bid at the sale of the Mississippi and Missouri Railroad, as mentioned in the above agreement, The Chicago, Rock Island and Pacific Railroad Company therewith authorized by a vote of their board of directors, hereby promises and agrees with the said committee that they will buy in the Mississippi and Missouri Railroad if it can be purchased for five millions of dollars; that they will hold the said Mississippi and Missouri Road in trust to carry out a certain agreement made by The Mississippi and Missouri Railroad Company with The Chicago and Rock Island Railroad Company, dated November first, 1865; that they will give the committee five million five hundred thousand dollars in first mortgage bonds either of the Chicago, Rock Island and Pacific Railroad Company, or of a new company made by the consolidation of the said Chicago, Rock Island and Pacific Railroad Company with The Chicago and Rock Island Railroad Company; and finally, that if the said Chicago, Rock Island and Pacific Railroad
386 Company have not, by the ninth day of October, 1866, given to the said committee five million five hundred thousand dollars in the bonds of a kind and description above mentioned, they will convey the said Mississippi & Missouri Railroad, its divisions, and all its property just as deeded to them, to the said committee at the expense of the Chicago, Rock Island and Pacific Railroad Company.

"Witness the signature of the president of the Chicago, Rock Island and Pacific Railroad Company this third day of July, 1866.

[SEAL OF COMPANY.] "JOHN F. TRACY,

"*President Chicago, Rock Island & Pacific R. R. Co.*"

The agreement specifies where and when it was made—it was executed in New York, on the third day of July, 1866; the paper is a copy of the agreement; there was no subsequent modification or change of either of these contracts of the third of July and the first of November. (Exhibit B.)

That paper—referring to another paper—was executed at Davenport; it refers to the agreement above named, as follows:

"Whereas the Chicago, Rock Island and Pacific Railroad Company have agreed to purchase the property of The Mississippi & Missouri Railroad Company, at the sale under the decree of foreclosure, and have agreed to pay Stanton, Elliott, Wilson, committee, five million five hundred thousand dollars, in bonds, as fully set forth in an agreement between said company and said Stanton, etc., dated July 3, 1866:

"Now, we hereby declare the intent and meaning of said agreement to be, that we, the said Stanton, etc., committee, are to pay to the plaintiffs, the trustees in the several mortgages, the amount of the bid that The Chicago, Rock Island and Pacific Railroad Company may make at said sale, and for such payment to the trustees so to be made by us are to receive from said company the said sum of five million five hundred thousand dollars, in manner and form as set forth in said agreement of July third, 1866.

"Witness our hands, at Davenport, Iowa, July ninth, 1866.

"G. W. STANTON, JR.

"B. WILSON.

"JOHN ELLIOTT."

The original of the paper of the third of July was handed to John P. Cook on the twenty-eighth of December, 1866. The original paper of the ninth of July was delivered to The Chicago, Rock Island and Pacific

Railroad Company at the time it was executed. The paper of July ninth was executed the day of the sale; whether immediately before or after I don't know. There was no other understanding than is referred to in that agreement of third of July between the committee and the officers of the Chicago and Rock Island or the Chicago, Rock Island and Pacific Railroad Company at the time the sale was made in regard to the bidding at the sale and the amount that should be bid by the parties or either of them. There was no understanding between the parties at the time of the sale that The Chicago, Rock Island and Pacific Company should bid five million and five hundred thousand dollars for the property if there should be competition. The understanding as to the amount they should bid was five million dollars. There was no understanding as to the amount that should be bid if there was no competition at the sale; that was left to the company.

387 1. Q. State whether or not, in these negociations, it was the purpose of the committee to secure five million five hundred thousand dollars for the property at that sale.

(Messrs. Rogers and Grant object as immaterial, and appearing in the paper itself.)

A. The object of the sale was to pass title to The Chicago, Rock Island and Pacific Railroad Company without reference really to the amount they should sell for. There was an agreement on the part of The Mississippi and Missouri Railroad Company for five millions and a half of dollars, the agreement being the one referred to in my answer to one of the previous inter'ogatories. The foreclosure and foreclosure sale were not exactly for the purpose of carrying into execution that agreement, but an agre'm'nt that was made by the committee with the Chicago and Rock Island. The date is July third, 1866, herein set out. The sale of the road under the foreclosure of the mortgages was to carry out all the agreements from November first, made by The Mississippi & Missouri Railroad Company, to the third of July, 1866. The two millions and one hundred thousand dollars bid at the sale by The Chicago, Rock Island and Pacific Railroad Company, was paid in bonds of The Mississippi and Missouri Railroad Company; I mean by that that the trustees or committee handed over the bonds according to the agreement of the ninth of July, to The Chicago, Rock Island and Pacific Railroad Company. The committee of the Mississippi and Missouri Railroad Company furnished the bonds; that is, Stanton, Wilson, and Elliott. I do not know whether there was any actual payment made to the trustees or master who conducted the sale; cannot say whether there was any money paid by the purchaser either to the master who conducted the sale or to the trustees. The Chicago, Rock Island and Pacific Railroad Company said they got the bonds from us for the purpose of paying the amount bid at the sale. The bonds that had been surrendered to the committee by the bondholders of the Mississippi and Missouri Railroad Company, under the agreement set out on page 100 of the transcript above referred to, and marked Exhibit D, were the bonds referred to in that agreement. The Chicago, Rock Island and Pacific Railroad Company did not make any payment to us for those bonds; no party made any payment to the committee for those bonds. I will explain: The original holders of those bonds deposited them with the Union Trust Company, as the agents of the committee, under the agreement of P. M. Meyers, before referred to. That agreement specifies that the holders of the bonds were to receive a certain scaled rate for them as stated in the agreement, in bonds to be issued as specified in the Meyers agreement, the trust company issuing certificates for the

bonds so deposited with them. Said certificates specify the amount of new bonds the holder was to receive in lieu of those surrendered. The holders of the certificates did receive bonds as specified in settleme't when surrendered. The new bonds were paid out by the Chicago, Rock Island and Pacific Railroad Company, as the agents of Stanton, Wilson, Elliott, the committee.

2 int. Then the only consideration paid for the bonds of the Mississippi and Missouri Railroad Company used by The Chicago, Rock Island and Pacific Railroad Company in making payment of the amount bid at the sale, was the new bonds issued in payment of the trust company's certificates in accordance with the original agreement?

Ans. Yes, sir.

388 Cross-examined:

3 int. Will you state how the bondholders of the Mississippi and Missouri Railroad Company who did not sign the Peter Meyers agreement, so called, were paid, and who paid them under that foreclosure and sale referred to?

(Objected to as immaterial and irrelevant.)

Ans. I was a holder, on the part of my firm, (Riggs and Company,) of four thousand dollars first mortgage land-grant bonds of the Mississippi and Missouri Railroad, which were not assented, which I took to the office of The Chicago, Rock Island and Pacific Railroad Company, and received from Mr. Tows, who acted on behalf of the trustees of the mortgage, the sum of twenty cents on the dollar for said bonds, being, as he stated, the amount that said bonds were entitled to from the proceeds of the sale. I surrendered the bonds to Mr. Tows. The numbers were 503, 504, 1712, 2290—for one thousand dollars each.

4 int. You have stated that The Chicago, Rock Island and Pacific Railroad Company, as agents of the committee—Stanton, Elliott, and Wilson—paid the holders of the trust company's certificates the new bonds; how was that agency created?

(Objected to as immaterial and irrelevant.)

Ans. By an agreement in writing between the committee and The Chicago, Rock Island and Pacific Railroad Company.

5 int. Have you the original of that agreement?

(Objected to on same ground.)

Ans. The original is in the pos'ession of the committee; it was signed in duplicate and one left with the committee and the other with the Rock Island Company.

The following is a copy, dated August first, 1866:

"Whereas The Chicago, Rock Island and Pacific Railroad Company, on the ninth day of July, in the year eighteen hundred and sixty-six, purchased the property of The Mississippi and Missouri Railroad Company in pursuance of an agreement made by the said Chicago, Rock Island and Pacific Railroad Company with Messrs. Stanton, Wilson, and Elliott, committee, dated the third day of July, in the year eighteen hundred and sixty-six:

"And whereas the duties of the said committee, as created and defined by an agreement made by the said committee with P. M. Myers and other holders of stocks and bonds of the Mississippi and Missouri Railroad Company, require them to distribute among such subscribing holders of stocks and bonds certain fixed bonds, bearing a fixed ratio to the surrendered bonds and stock of the Mississippi and Missouri Railroad Company, and to do sundry other things, as by a ref'rence to said agreement will more fully appear:

"Now, this agreement, made between The Chicago, Rock Island and Pacific Railroad Company, of the first part, and George W. Stanton, jr., Blakeley Wilson, and John Elliott, committee, of the second part, witnesseth: That the party of the first part, as the agent of the parties of the second part, agrees to distribute the new bonds with interest from the first day of December, eighteen hundred and sixty-five, to the date of the bonds, and to fulfil all the other obligations in the said agreement of the said committee with P. M. Meyers and others contained.

"It being understood that the distribution of the bonds shall be made within the time, and subject to the penalty of the agreement of July third, between the same parties, and that the interest shall be
389 distributed at the same time, or whenever, in the opinion of John F. Tracy, Joseph E. Sheffield, and William Walter Phelps, or any two of them, such distribution can be made without risk to the right of the party of the first part hereinafter conceded to use the same, or that part of the same, to defend themselves against any suits or liabilities incurred by them under this agreement, which shall be neesessary or proper. But it is also understood, in the event of a delay of such distribution of interest of more than six months from the date of these presents, the party of the first part shall pay interest upon said interest at the rate of seven per cent. per annum thereafter, and also that the party of the first part will pay all the costs and expenses of the purchase and sale of the property of the Mississippi and Missouri Railroad Company; give to the plaintiffs in said suit of foreclosure all that they shall be respectively entitled to; and to the party of the second part, twenty-one bonds of one thousand dollars each, of the kind and description mentioned in an agreement of The Mississippi and Missouri Railroad Company, dated the first day of November, eighteen hundred and sixty-five, as a proper compensation for their services as said committee.

"And finally, that the party of the first part will hold harmless and protect the said party of the second part, and each of them, from any liability, claim, demand, or suit arising from any matters contained in said agreement with P. M. Myers and others; and the parties of the second part, in consideration of the aforesaid covenants, agree—

"First. To give to the party of the first part the bonds of the Mississippi and Missouri Railroad Company now on deposit with the Union Trust Company of New York.

"Second. To authorize the party of the first part to use their names in any way neesessary and proper to enable the party of the first part to close up the trust created by the said agreement with P. M. Myers, and to draw upon the sum reserved as interest for the discharge of any payments, costs, expenses, or other outlay incurred in the settling the said trusts, if such payments, costs, expenses, and outlay shall exceed the value of five million five hundred thousand dollars in bonds of the contemplated issue, and not otherwise. It being the general scope and understanding of this agreement that The Chicago, Rock Island and Pacific Railroad Company having by this agreeement assumed all the liabilities and obligations of Messrs. Stanton, Wilson, & Elliott, committee, the said company shall have also all the rights and privile*d*ges of the committee, into whose place the said company steps, and it being also understood that nothing herein contained is intended to give to the party of the first part any right, sanction, or color of right to delay under any circumstances the payment of c'upons or interest warrants on the bonds of the new issue to be distributed among the holders of bonds or stocks of the Mississippi and Missouri Railroad Company, as provided by all previous agreements hereinbefore mentioned.

"In witness whereof, the said parties have hereunto signed their names, the said Chicago, Rock Island and Pacific Railroad Company by its president, thereunto lawfully authorized by a resolution of the executive committee of said company, and the other parties hereto by themselves, personally, this first day of August, 1866.

"Chicago, Rock Island and Pacific R. R. Co.,

"By JOHN F. TRACY, *President.*

"G. W. STANTON, JR.,

"JOHN ELLIOTT.

"B. WILSON."

[5-cent stamp, cancelled.]

(Signed) JOHN ELLIOTT.

390 George W. Stanton, jr., being duly sworn, testified as follows, on behalf of Foster and als.:

I am George W. Stanton, jr., who was a member of the committee appointed by the meeting of the bond and stock holders of the Mississippi and Missouri Railroad Company of the twentieth of October, 1865. I was present at the sale of said company's road on the ninth of July, 1866. I was present when the agreement of the third of July, 1866, set out in Mr. Elliott's deposition, was entered into. I presume the original was signed by the committee. It set forth the understanding that was then entered into between the committee and the parties whose names are attached to it. There was, I think, some change, modification, or addition made to that agreement subsequently. I think it was done in New York in December following. There was an alteration, modification, or addition made to the agreement of July third. There is a subsequent one of July ninth, 1866. That was executed at Davenport. I don't recollect whether before or after the sale on foreclosure. I don't think the agreement of July third was violated. I have no positive recollection; no further than the subsequent agreement of July ninth. The agreement of the parties in regard to the amount that was to be bid, was that the Chicago, Rock Island and Pacific Railroad Company should bid up to five millions of dollars in the event of any competition. It was always understood between the parties at the time of the sale that the agreement that had been entered into of the first of November, 1865, should be observed by the purchaser and that payment should be made in accordance with the contract of 1865 without reference to the amount bid; that is, that the bond and stock holders should receive five milions & a half in bonds without ref'rence to the amount bid at the sale. I mean the bond and stock holders who signed the Peter Meyers agreement. I don't recollect anything that was said about the bond and stock holders who did not sign the Peter Meyers agreement not being entitled to any portion of that five and one-half millions of dollars. The question was left open. The purchase-money bid at the sale was paid in bonds of the Mississippi and Missouri Railroad Company.

6 int. The purchaser at the sale of the Mississippi and Missouri Railroad received those bonds from the committee through the trust company, or rather the committee delivered them to the Chicago, Rock Island and Pacific Company.

Ans. Yes; I think the bonds that were delivered to The Chicago, Rock Island and Pacific Company were bonds that had been surrendered to the committee by bondholders in accordance with the terms of the Peter Meyers agreement. The Chicago, Rock Island and Pacific Railroad Company paid for those bonds in new bonds of The Chicago, Rock Island and Pacific Railroad Company. Those bonds were issued in

accordance with the agreement of November first, 1865, a copy of which is set out on page 96 of the transcript of record, case 319, Supreme Court of the United States, December term, 1868. No other consideration that I know of was paid for those bonds by The Chicago, Rock Island and Pacific Railroad Company. I think they delivered the bonds they received from us to the trustees.

G. W. STANTON, JR.

Adjourned to Saturday, September 25th, 1869, at ten o'clock a. m.

391 SEPTEMBER 25TH, 1869.—*Second day.*

Blakeley Wilson called by Mr. Withrow on behalf of Foster and al.:

1 int. Are you the Blakeley Wilson who was a member of the committee appointed by the stock and bond holders of The Mississippi and Missouri Railroad Company at the meeting held in the city of New York on the twentieth day of October, 1865, to arrange the mode of sale and payment of the Mississippi and Missouri Railroad to The Chicago & Rock Island Railroad Company?

Ans. I am.

2 int. Give the names of the other members of the committee.

Ans. George W. Stanton, jr., & John Elliott.

3 int. Will you examine Exhibit B, on page 96, transcript of record in case 319, Supreme Court of the United States, December term, 1868, and state whether or not you have ever seen the original contract of which said exhibit purports to be a copy?

A. This contract does not appear to have been signed by the committee. I have no doubt I saw it.

4 int. On the bottom of page 98 it is signed by the officers of the two railroad companies?

A. It is signed by the officers of the two railroad companies. I have no doubt I saw it.

5 int. In article one of said contract The Mississippi and Missouri Railroad Company stipulated to take steps to cause the mortgages upon its line of road & other property to be foreclosed and sold. State whether or not those steps were taken by or under the direction of the committee of which you were a member.

A. They were.

6 int. State whether or not the committee of which you were a member caused all of the outstanding mortgages to be foreclosed, and, if so, in what court.

Ans. They caused them all to be foreclosed. I suppose it was the circuit court of the United States for the district of Iowa.

7 int. State when the sale under the decree of foreclosure was made.

A. The sale was made some time in the early part of July. I do not know that I could say from memory the precise date.

8 int. Of what year?

A. Ninth of July, 1866, I think it was.

9 int. You may state who purchased the property of The Mississippi and Missouri Railroad Company at that sale.

A. The property was purchased by The Chicago, Rock Island and Pacific Railroad Company.

10 int. State whether or not there had been any agreement or agreements entered into between your committee and the said railroad company, or any persons acting for it, in regard to said sale before it was made.

Ans. Yes, sir; there was.

11 int. State whether or not it was in writing.

A. It was.

(Copy of the contract of the third of July, produced by Mr. John Elliott, was now exhibted to the witness, and he was asked whether or not that is a copy of the agreement to which he refers.)

Witness answers: It is, sir.

12 int. Do you know whether or not that was ever signed by the committee?

A. It seems to call for the signature of the committee. I have
392 no doubt the signature of the committee was there. I have no doubt in my own mind that it must have been signed by the committee.

13 int. State whether or not this written agreement took the place of a parol agreement that had been entered into between the parties prior to the execution of this agreement.

A. Not to my knowledge; not differing from this.

14 int. State whether or not there was an understanding before this agreement was entered into between the parties, that the committee should bid the property in at the sale, and then convey to such party as The Chicago and Rock Island Railroad Company should name in the execution of the contract of November 1st, 1865.

A. The contract of November first, 1865, I think, provided that the road should be purchased by the committee and afterwards conveyed. There was an agreement that it should be purchased by the committee.

15 int. You say there was an agreement that it should be purchased by the committee; that agreement was superceded, was it not, by the agreement of the third of July, 1866, in which it stipulated that The Chicago, Rock Island and Pacific Company, should purchase and the Mississippi should not?

A. Yes, sir; it was.

16. int. What arrangement was made for the payment of the amount bid while the agreement continued in force for the committee to purchase; what was the understanding as to the manner in which the committee should pay for the property?

A. There was no understanding.

17 int. When was the proposition to pay the amount of the bid in bonds which had been surrendered to the committee first made and by whom?

A. I do not know that there was any such arrangement.

18 int. State whether or not the committee furnished The Chicago, Rock Island and Pacific Railroad Company any bonds to be used in the payment of the bid, the amount due at the foreclosure sale.

Ans. The committee delivered to The Chicago, Rock Island and Pacific Railroad Company the bonds deposited with the Union Trust Company for the purpose of aiding them in making the payment for the purchase of the road; the arrangement was that The Chicago and Rock Island Railroad Company should loan the money to The Chicago, Rock Island and Pacific Railroad Company to pay to the trustees, and the bonds were delivered to The Chicago, Rock Island and Pacific Railroad Company. They held the bonds as collateral; that was my understanding of it.

18 int. Were all the lands surrendered to the committee under the Peter Meyers contract delivered to The Chicago, Rock Island and Pacific Railroad Company, to be used by them in making payment to the trustees of the amount bid at the foreclosure sale of the property?

A. No; only those bonds which belonged to the mortgagees under which the road was sold. The road was sold under the first mortgage on the eastern division; those bonds were delivered to The Chicago, Rock Island and Pacific Railroad Company on the first mortgage on the Oskaloosa division, and also delivered under the first mortgage on the western division. The others were not.

19 int. What consideration did The Chicago, Rock Island and Pacific Railroad Company pay the Stanton committee for those bonds?

A. They gave them no money consideration, only that they made the payment under the foreclosure sale.

20 int. State whether or not the consideration for the transfer
393 of those bonds of the Stanton committee to The Chicago, Rock Island and Pacific Railroad Company for the payment of the amount bid at the sale, was not the performance on the part of said railroad company of the covenants entered into by The Chicago and Rock Island Company in the contract of Nov. 1st, 1865, a copy of which is set out on page 96 of the transcript which has been exhibited to you.

Witness. What covenants do you refer to?

21 int. To issue the bonds of the new company for five million five hundred thousand dollars; whether that was the only consideration?

A. The only consideration that ever was understood in the matter was that they should do for us what we had agreed to do on the payment of the trust under the mortgage; that is, pay the trust. I know of no other consideration.

22 int. State whether or not The Chicago, Rock Island and Pacific Railroad Company issued its new bonds as stipulated in said agreement.

Ans. It did.

23 int. State whether or not it ever paid any other consideration for the transfer of the bonds surrendered to the Stanton committee to be used in paying the trustees.

A. As I understand it, the consideration that they gave the Stanton committee was the payment of the amount bid at the foreclosure sale.

24 int. How do you understand that payment was made?

A. I see by E. Cook's testimony that it was made in cash; of course I have no knowledge what way it was made, because it was done by the officers of the Chicago, R. I. and Pacific Railroad Company.

25 int. State whether or not you have any understanding but that gained from Mr. Cook's testimony.

A. So far as regards the first mortgage land grant, I have my knowledge from Mr. Walker, one of the trustees.

26 int. State whether or not those bonds were surrendered by you to be used by that company in the payment of the bid.

Ans. They were not; the bid was to be paid by us in cash.

27 int. Was it your understanding, when you surrendered the bonds to The Chicago, Rock Island and Pacific Railroad Company, that they were to be used by that company in paying the bid?

A. No, sir; my understanding was that they were to be used by them in raising the money.

28 int. How did you understand that they would raise the money?

A. From The Chicago and Rock Island Railroad Company.

29 int. Explain how you understood the money was to be raised on bonds that had been foreclosed.

A. In the same manner that money is raised on bonds of any kind.

30 int. State the object of the sale under the foreclosure of the

mortgages, as to whether or not it was intended to carry out and execute any agreements that had been entered into between The Chicago and Rock Island Railroad Company and The Mississippi and Missouri Railroad Company, and between the Stanton Committee and The Chicago and Rock Island Railroad Company, or any persons representing it.

A. As far as the committee were concerned, the object of the foreclosure sale was to get title to the road so as to enable the committee to carry out the agreement that they had made with The Chicago, Rock Island and Pacific Railroad Company.

31 int. State whether or not the object of the foreclosure was to carry out all of the agreements made by The Mississippi and
394 Missouri Railroad Company from November first to the third day of July, 1866, including both of them.

A. The committee had nothing to do with the agreements between The Mississippi and Missouri Railroad Company and The Chicago, Rock Island and Pacific Railroad Company. Their object was simply to carry out the agreements made by themselves.

32 int. Do you wish to be understood as stating that these bonds were not handed over by the Stanton committee to The Chicago, Rock Island and Pacific Railroad Company to be used in making payment of the amount bid on the foreclosure sale?

A. I wish to be understood as saying this: That the bonds were handed over to The Chicago, Rock Island and Pacific Railroad Company for the purpose of enabling them to raise money to make the payment under the sale.

33 int. Did the officers of the Chicago, Rock Island and Pacific Railroad Company tell the Stanton committee that they had procured these bonds for the purpose of using them and making payment?

A. That was the understanding at the time the bonds were delivered, that they were to be so used.

34 int. How long was the subject-matter of this contract of July 3rd under consideration between the committee and the officers of the Chicago and Rock Island Railroad Company?

A. I do not recollect.

35 int. Where were the negociations carried on?

A. I should not want to state that, positively, from memory, either. Probably they were carried on in this city, but still I could not positively recollect.

36 int. State whether or not you were present at Davenport at the time of the sale of the railroad.

A. I was.

(The contract of the ninth of July, 1866, exhibited to the witness.)

37 int. State whether that was executed, if you know.

A. That was executed at Davenport.

38 int. State whether it was before or after the sale.

A. In regard to the actual signature of this document I cannot say whether it was before or after the sale; the agreement itself was made before the sale.

39 int. State whether or not the points of the agreement of the third of July was observed at the sale by both parties.

A. I have no doubt they were, as far as the committee was concerned, because we carried out all our agreements. Yes, sir, that agreement was carried out by the committee.

40 int. State who were the bidders at the sale at the time the sale was in progress.

Ans. The first bid on the first mortgage division was made by E. Cook at eight hundred thousand dollars, and a bid was made by me at the request of Ebenezer Cook, John F. Tracy, and, I think, either Mr. Cook or Mr. Tracy, or the firm of Cook and Drury, to bid nine hundred thousand dollars for their account.

41 int. Were you and E. Cook bidding against each other, and helping the same party?

A. I cannot say that Mr. Cook was representing The Chicago, Rock Island and Pacific Railroad Company. He gave that name as the purchaser. I bid at the request of E. Cook, Tracy, and others, for them.

395 42 int. For the Chicago, Rock Island and Pacific?

A. I do not know about any one in the matter, except those individuals; what they represented I cannot say. The bid was in no sense a bid of the committee; the committee had nothing to do with it; the other members of the committee knew nothing about it.

43 int. State whether or not there was any understanding as to the amount The Chicago, Rock Island and Pacific Railroad Company should pay before the sale.

A. There was no further understanding than is embodied in that agreement.

44 int. That they should pay five millions of dollars if there was competition?

A. That they should pay five millions of dollars.

45 int. Was that coupled with the condition that if there was no competition they should bid any sum they saw proper, but should pay five million five hundred thousand dollars, without ref'rence to the amount of their bid?

A. The agreement itself states that *that* they should pay five million dollars.

47 int. Was there any understanding between the parties that they might bid at the sale any sum they saw proper to bid, but that should be the actual amount paid without ref'rence to the bid?

A. The Chicago, Rock Island and Pacific Railroad Company were to pay five million dollars for the road.

48 int. Was there an understanding between the committee and The Chicago, Rock Island and Pacific Railroad Company, that if there was no competition they would not bid that amount at the sale, but would pay it in accordance with the agreement?

A. I do not know that there was any distinct understanding, other than they should, if necessary, bid up to five million dollars for the road.

49 int. Was there anything said between the committee and the officers of the company in regard to the amount that they would bid if there was no competition at the sale?

A. Nothing to my knowledge; nothing definite.

50 int. Was anything indefinite said?

A. Not that I am aware of; not that I recollect.

51 int. Was there not an understanding between the committee and the officers of the road that if there was no competition they would bid less than five million dollars; but if there was competition they would run their bids up to that amount—any conversation or negociation in regard to that matter?

Ans. No, there was not. It was no interest to the committee what they bid, provided they did not bid more than five million dollars. It says their bid shall not exceed five million dollars.

52 int. State whether or not one of the considerations that induced

the committee to enter into the contract of the third of July, and the ninth of July, was an understanding between the officers of the railroad company and the committee, that *if* the purchaser should pay five million five hundred thousand dollars for the property, without ref'rence to the amount bid at the sale.

A. I do not know that that was one of the considerations of the agreement. The point that we were aiming at that sale was to get a title to the road.

53 int. Do you wish to be understood as saying that the covenant of The Chicago and Rock Island Railroad Company to pay five million five hundred thousand dollars for the road had no influence in induc-
396 ing you to consent that they should be the purchasers at the sale, without fixing the amount that they should bid, and stipulating that the committee should not bid at the sale?

(Messiurs Grant and Rogers object to the question, because it is leading, in the nature of a cross-examination of the counsel's own witness, and because it is immaterial, the contract showing fully the nature and objects of the transaction inquired about.)

A. I mean to say that the only consideration that we had in making that agreement for the purchase of the road by The Chicago, Rock Island and Pacific Railroad, was to enable us to get a title to the road, so as to carry out the agreement with The Chicago and Rock Island Road.

54 int. Was not the covenant of The Chicago and Rock Island Railroad Company to pay five million five hundred thousand dollars for the property, one of the inducements to your entering into the agreements of the third and ninth of July? Please answer yes or no.

(Messrs. Grant and Rogers object to the question for the same reason as the last question.)

A. It certainly was not one of the inducements to enter into it any further than I said in the answer to the previous question.

55 int. Do you wish to be understood as saying that if you had not had the agreement of The Chicago and Rock Island Railroad Company to pay five million five hundred thousand dollars for the property, that you would have consented to the execution of the agreements of the third and ninth of July?

A. I mean to say if he had not desired to get title to the property, we should not have entered into any such agreement.

56 int. I repeat the question, and request an answer, yes or no.

A. I do not know what might have been the ease; I cannot say.

57 int. Why was the sum of five million dollars agreed upon in the contract of the third of July instead of five million five hundred thousand dollars?

A. I do not recollect now distinctly why five million dollars was set, but as far as I recollect it was that it was as large as the committee could afford under the circumstances.

58 int. State whether or not the fact that there were outstanding bonds had anything to do with fixing the amount.

A. None whatever.

59 int. State whether or not the difference of five hundred thousand dollars was reserved to provide for the sixteen per cent., or any portion of it, to be paid to stockholders.

A. Not to my recollection.

60 int. Can you state any reason why five million dollars was named in the contract of the third of July, and five million five hundred thousand by the contract of November 1st, 1865, the difference between the two being five hundred thousand dollars?

A. I can state this from recollection: that the committee delegated their duty to buy the road to The Chicago, Rock Island and Pacific Railroad Company; and, in delegating that, they required The Chicago, Rock Island and Pacific Railroad Company to agree to bid as much as they would have felt justified in bidding themselves.

61 int. State whether or not the understanding between the parties was, that if The Chicago, Rock Island and Pacific Railroad Company should bid five million dollars, that it should still be bound to the performance of contract of November first, set out on page 96 of the
397 transcript heretofore exhibited to you, & particularly the covenant to pay five million five hundred thousand dollars for the property.

(Messrs. Grant and Rogers objected to the question, because the contract explains itself—both the contract of November first, 1865, and of July third, 1865; each of them explains this, and they cannot be altered by parol evidence.)

A. That agreement was between The Mississippi and Missouri Railroad Company and The Chicago and Rock Island Railroad Company. There were no understandings that were not embodied in the contracts themselves.

62 int. Was there any understanding between the parties at the time the contract of July third, 1866, was entered into that The Chicago and Rock Island Railroad Company should pay or cause to be paid $5,500,000 for the property, even though it bid but five million dollars at the sale?

(Messrs. Grant and Rogers objected as calling for parol evidence for the contract which is in writing.)

A. I answer that question the same as I did the other; the whole subject was embodied in the contracts.

63 int. Please enumerate all of the written contracts which comprise all of the understandings between the parties.

A. I can only enumerate them by saying that they have been put in evidence. I believe that every contract made between us has been put in evidence.

64 int. State whether or not the contract of the third of July, 1866, was intended by the parties to supersede and take the place of all previous contracts between either the railroad companies and the Stanton committee, and either of the parties.

(Messrs. Grant and Rogers object for the reason that the contract of the third of July, 1866, is the best evidence of the intent inquired about them.)

A. It was not, except so far as may be specified in the contract itself. I do not know whether that specifies that or not.

65 int. How much has The Chicago, Rock Island and Pacific Railroad Company actually paid for the property of The Mississippi and Missouri Railroad Company?

A. I am unable to tell.

66 int. Do you know how many bonds they have issued?

A. All I know is, they were to issue five million five hundred thousand dollars; they were to issue to the holders of the Union Trust Company's certificates, and, so far as I know, they have bonded all those certificates.

67 int. Is that in addition to the amount that has been paid to the reciever of the circuit court of the United States for the district of Iowa in the case of Howard & others against The City of Davenport & others?

A. These bonds and the money paid to the reciever, constitute the

purchase-money that has been paid for this property. Of course, there is a portion of those bonds that belong to the non-assenting bondholders, and I do not undertake to say what has been done with them. They would have belonged to them if they had assented. I do not undertake to say that they have issued them all to the Union Trust Company; I do not know that the certificates have been surrendered.

68 int. In the performance of what contract or contracts were these bonds issued by The Chicago, Rock Island & Pacific Railroad Company?

(Mess. Grant & Rogers object on the ground that it calls for
398 matter of law. It is for the court to say in the performance of what contract the acts were done.)

A. As I understand it, it was done in accordance with all of the contracts, because that was one of the main points of all the contracts.

69 int. Including the contract of July first, 1865, for the foreclosure of the road?

A. Not that; that had nothing to do with that at all. I do not think the committee had anything to do with the contract of November first, 1865; there was no contract with the committee about the purchase of the road.

70 int. You had no contract with The Chicago, Rock Island and Pacific Railroad Company until July third?

A. The contracts themselves will show that.

71 int. State whether or not the payment of five million five hundred thousand dollars by The Chicago, Rock Island & Pacific Railroad Company was treated and considered by the parties as a performance upon the part of said company of the covenants of The Chicago, Rock Island Railroad Company and The Chicago, Rock Island and Pacific Railroad Company, and of the parties representing the last-named company, in the several contracts of November first, 1865, set out on page 96 of the transcript heretofore exhibited to you; the contract of July third, set out in the deposition of Mr. Elliott, and the contract of July ninth set out in the same deposition.

(Objected to.)

A. That seems to be a question for a lawyer to answer. They certainly considered it as a performance of such agreement as required them to pay five million five hundred thousand dollars. I do not wish to be understood as testifying that they have paid five million five hundred thousand dollars. I do not want that to be involved in any answer that I may make.

72 int. Who managed the foreclosure suit upon the part of the plaintiffs in the cross-bills filed; the Stanton committee or the trustees named as plaintiffs in the several cross-bills? Who employed counsel and directed and controlled the management of that suit—the trustees or the Stanton committee?

A. It was done by the Stanton committee, with the acknowledgment and consent of the trustees.

73 int. State whether or not the trustees named in the several mortgages foreclosed in the suit of Durant and others against The Mississippi and Missouri Railroad Company and others, in the circuit court of the United States for the district of Iowa, exercised any control whatever over said suit.

A. I suppose they did all the control that was necessary for them to exercise; I cannot say anything about that.

74 int. Who employed the solicitors who represented the trustees?

A. I presume they were employed by the trustees; the suit was brought in their names.

75 int. State whether or not the solicitors who represented the plaintiffs in the cross-bills filed in the said cause were employed by the Stanton committee?

Ans. They were suggested by the Stanton committee and accepted by the trustees.

76 int. Who made the contracts for services with those solicitors?

399 A. I do not know that there was any contract. I have no knowledge of it.

77 int. If you know, state who paid them for their services.

A. I presume—though I do not know—they were paid.

78 int. Who paid them?

A. I do not want to testify to what I do not know. The committee did not.

79 int. State whether or not the trustees were present at the foreclosure sale.

A. I think not.

80 int. Who represented the bondholders at the sale?

A. The committee were present; as far as they were authorized to represent the bondholders, they, I suppose, *they* represented them. The committee had nine-tenth' of the bonds themselves.

81 int. State whether the trustees under the mortgages exercised any control over the bonds that had been surrendered to the Stanton committee during the time they were in the hands of the committee.

A. They did not.

82 int. State whether or not the mortgages were not foreclosed by the Stanton committee as the representative of the bondholders, the names of the trustees being used as plaintiffs, the trustees exercising no control over the suits, and no control over the bonds, and doing no acts for the protection of the holders of the bonds represented by the Stanton committee.

A. I would not like to say that the trustees did not do any acts in connection with those who had bonds to protect. I have no knowledge of their actions at all.

83 int. I understood the fact to be that the bonds were surrendered to your committee; the trustees let you run them.

A. I think very likely that may be the case, still I do not know what the trustees did. I know what the committee did; I do not know what the trustees did.

Cross-examination by Messrs. Grant and Rogers:

1 int. Will you state whether there was any agreement prior to the sale as to the amount which should be bid, or the limit of the amount to be bid, by The Chicago, Rock Island & Pacific Railroad Company, or by any other party, for any particular division of the railroad which was to be sold on the seperate mortgages on the foreclosure sale.

A. There was not any specific agreement as to the amount to be bid for any portion of the road; there was something said about bidding a million dollars for the eastern division. There was no bargain or agreement that I know of except such as are embodied in the contract.

2 int. You have spoken in your direct examination about an agreement or understanding had, that the committee should purchase in the road at the foreclosure sale. When was that agreement or understanding had?

A. I am not sure; if it is not embodied in some of these contracts, I am mistaken on that point.

3 int. At whose request or instance was the contract of the third of July made?

A. The proposition to make that contract came to the committee from The Chicago, Rock Island and Pacific Railroad Company.

4 int. What reason, if any, was assigned to issue such contract, instead of the committee buying it?

400 A. The object stated was that if they bought it and afterwards conveyed to The Chicago, Rock Island and Pacific Railroad Company, two conveyances and two stamps would be necessary; it was done to save expense.

X 4 int. You have stated that the object of the foreclosure was to obtain title to the railroad, so as to enable the committee to carry out the contract for the sale of it to the Rock Island company. Will you state why that particular mode of foreclosure was selected?

(Objected to on the ground that it is immaterial and irrelevant.)

A. The only reason was, it was the only way in which we could get title.

6 int. Was not the foreclosure selected as the means of making the title for the purpose of cutting off the rights of non-assenting bondholders.

A. I think that follows from my other answer. We could have got tietle without foreclosure if there had been no non-assenting bond or stock holders.

7 int. Can you tell how the non-assenting bondholders were provided for by this foreclosure sale?

A. They received their pro rata share of the proceeds of the foreclosure sale.

8 int. They had their share of the foreclosure sale?

A. Yes, sir.

9 int. Was that according to the amount that was bid on the division of each particular mortgage?

A. Yes, sir.

10 int. Do you remember how much was the share of the first land-grant mortgage's on that foreclosure?

A. About twenty per cent.

11 int. You have stated that The Chicago, Rock Island and Pacific Railroad Company, the bidders at the sale, were to provide the money for that sale. Do you know whether they bid it or not?

A. I understand that they did

(Objected to as hearsay evidence.)

12 int. Do you know the process by which the assenting bondholders gave up their claims on the foreclosure sale? And gave the amount they were entitled to under the contract of the first of November, 1865.

A. They did that by signing P. M. Meyers' agreement and depositing their bonds with the Union Trust Company. In the first place, they signed P. M. Meyers' contract and deposited their bonds with the Union Trust Company, taking the Union Trust Company's receipt specifying the amount and kind of bonds deposited there, and afterwards they presented those receipts to The Chicago, Rock Island and Pacific Railroad Company, and received from that company the amount of their bonds which the certificate said they were entitled to.

13 int. It is already in evidence that The Chicago, Rock Island and

Pacific Railroad Company undertook, as your agents, to pay out those bonds. Is that so?

A. Yes, sir.

14 int. Were they also the agents of the trustees under the mortgages for the purpose of paying the non-assenting bondholders?

A. They were.

15 int. You said you gave to The Chicago, Rock Island and
401 Pacific Railroad Company a certain quantity of bonds to enable them to raise money to comply with their bid. How was that to be done.

A. They were to obtain a loan from The Chicago and Rock Island Railroad Company.

16th int. Do you know whether they did get a loan in the form of agents or in any other way?

A. I cannot say of my own knowledge. It was agreed that that should be done at the time the bonds were delivered.

17 int. What was this money for that was to be raised?

A. For the purpose of paying the amount of the bid on the foreclosure sale.

18 int. Will you tell me the difference between the assenting and non-assenting bond and stock holders?

A. The assenting bondholders or stockholders were those who signed the Meyers agreement and deposited their bonds and stocks with the Union Trust Company. The non-assenting bond and stock holders are those who did not do so.

19 int. Was it the business of this Stanton committee to procure the assent of the bond and stock holders?

A. That was their duty.

20 int. Did they take steps to do that?

A. They did.

21 int. How?

A. They advertised in the newspapers frequently, calling attention to it through the public papers in every way that it was possible for them to do, and, as far as they knew the bond and stock holders, by personal application.

22 int. Did they fix the time by which the assent of this contract was to be limited?

A. They fixed a time.

23 int. When was the time that they fixed?

A. I don't recollect the date. I think it was on the day of July, 1866. We made it as late as possible.

Re-direct examination:

1 int. You say there was no agreement in regard to the amount that should be bid at the forecloseure sale for each division. State what was said by any of the parties in the presence of the others in regard to it.

(Objected to as immaterial and hearsay.)

A. There was something said about bidding a million dollars for the first mortgage of the eastern division. When I say there was something said, there was nothing definite said; there was no agreement to that effect at all; there was no agreement other than stated in the contract.

2 int. Was there anything further than that said about bidding?

A. There was probably something said as regards the bids on all the divisions, still I do not recollect what it was; what was said was re-

garding the price at which they should be started; still there was no agreement at all.

3 int. When and where was that said?

A. I do not rememeber any further than that it was said in this city.

4 int. Who was present?

A. I cannot say that either.

5 int. Do you remember any persons who were present?

A. No, sir; there were probably some of the committee, may be
402 all of the committee, and some of the Chicago, Rock Island and Pacific Railroad gentlemen; but who were there I cannot say.

6 int. State whether or not it was while the matter of this sale was under consideration by the parties in interest.

A. I do not understand that.

7 int. Was it while you were carrying on negociations and making provisions for the sale?

A. No, sir; it was not while we were carrying on any negociations. It was merely ordinary conversation.

8 int. State what was said at Davenport in regard to the amount that should be bid for the several divisions.

A. I do not recollect anything being said there, with the exception of what I have testified to at the time the bid was made.

9 int. State whether or not the aggregate of the amounts named that should be bid was five million dollars.

A. I did not say there were any amounts named.

10 int. Did the several amounts at which the bids were started amount to five million dollars?

A. They did not.

11 int. Did you hear any reason assigned by any of the parties at any time for bidding less than five million dollars at the sale?

A. No particular reasons. It was a matter of no particular importance to the committee what amount was bid—none whatever—except as far as they stipulated. I never had any discussions with those gentlemen about the amounts to be bid for the different divisions.

12 int. Who drew the contract of the third of July?

A. I cannot say.

13 int. Did the committee at that time have an attorney?

A. Yes, sir.

14 int. Who was it?

A. Mr. Phelps.

15 int. You say one of the purposes of the committee in the management of this business was to cut off the rights of the non-assenting bondholders, excepting as to their pro rata share of the amount bid at the foreclosure sale; do you wish to be so understood now?

A. No, I do not understand that was one of their objects; that it was a thing they proposed to do. The fact that there were the non-assenting bondholders and non-assenting stockholders rendered it necessary that the foreclosure should take place in order to pass the title.

16 int. Has there been any money furnished to the trustees of the mortgages to pay to the non-assenting bondholders more than their pro rata share of the amount bid at the sale for the several divisions?

A. No, sir; not that I am aware of.

17 int. Was the Stanton committee ever made any provisions for the payment of the non-assenting bondholders, of any moneys in addition to their pro rata share of the amount that was bid upon the several divisions of the road.

A. Nothing further than was made to them in their opportunity of becoming parties to the Meyers contract.

18 int. That opportunity was limited to the July, you say?

A. Whatever that date was.

19 int. You say The Chicago, Rock Island and Pacific Railroad Company made a loan to Chicago and Rock Island Railroad Company. How much did they borrow of The Chicago & Rock Island Railroad Company?

A. I say that the agreement between the committee and The
403 Chicago, Rock Island and Pacific Railroad Company, in accordance with which the committee delivered to The Chicago, Rock Island and Pacific Railroad Company the bonds deposited with the Union Trust Company, was that The Chicago and Rock Island Railroad Company was to furnish the money due to them under the foreclosure sale.

20 int. That was the only amount to be paid?

A. Yes, sir.

21 int. Was it understood with them that any other amount that should be due to any of the bondholders should be paid in cash to the trustees by The Chicago, Rock Island and Pacific Railroad Company?

A. So I understood it.

22 int. Was it not the understanding that The Chicago, Rock Island and Pacific Railroad Company should pay to the trustees the amount that should be due to assenting bondholders in bonds, and then furnish the trustees with a sufficient amount of money to pay to the non-assenting bondholders their pro rata share of the amount bid at the sale?

A. I did not so understand it.

22½ int. Did you understand that The Chicago, Rock Island and Pacific Railroad Company was to pay to the trustees two million one hundred thousand dollars in cash?

A. Yes, sir.

23 int. What were the trustees to do with it?

A. The trustees were to divide it among the bondholders.

24 int. The bondholders were to receive this money from the trustees?

A. Yes, sir.

25 int. Did not the bondholders hold certificates of the trust company?

A. Yes, sir.

25½ int. But those certificates were to be paid by The Chicago, Rock Island & Pacific Railroad Company?

A. They were to be paid by The Chicago, Rock Island and Pacific Railroad Company in their own bonds.

26 int. Then the assenting bondholders were to receive the new bonds of The Chicago, Rock Island and Pacific Railroad Company according to the agreement of November first, 1865, and were also to receive in addition thereto their pro-rata share of $2,100,00 in cash?

A. No, sir.

27 int. What was your understanding?

A. The Chicago, Rock Island and Pacific Railroad Company, as I understood it, and as I have said, were to pay to the different trustees the aggregate of two million one hundred thousand dollars, or whatever the amount that was due under the foreclosure sale was; I cannot state the amount exactly; after paying that they were to receive from the trustees the dividend to which the bonds we furnished them was entitled.

28 int. Your understanding, then, was that The Chicago, Rock Island

Pacific Railroad Company should pay the whole two million dollars of certificates to the trustees—each one his proportion?

A. Yes, sir.

29 int. And then that the trustees should deliver back to The Chicago, Rock Island and Pacific Railroad Company the share to which the holders of the trust company's certificates would be entitled of that money?

A. The holders of the trust company's certificates were not entitled to anything except The Chicago & Rock Island Company's bonds.

404 30 int. Do you understand that The Chicago, Rock Island and Pacific Railroad Company were to pay over the entire two millions one hundred thousand dollars in cash to the several trustees, and that the trustees should then deliver back to the railroad company the full amount of the shares of that two million one hundred thousand dollars which would belong to the bondholders who had surrendered their bonds to the trust company and received certificates?

A. I understand that The Chicago, Rock Island and Pacific Railroad Company agreed with the committee that they would pay to the trustees the two million one hundred thousand dollars, or whatever other amount it was, that the committee had agreed to pay under the foreclosure sale. The bonds that were deposited with the Union Trust Company were, of course, entitled to their pro rata share of the proceeds. We gave those bonds to The Chicago, Rock Island and Pacific Railroad Company to enable them to raise money to make a payment, and afterwards to receive a dividend on the bonds from the trustees, and return the money.

BLAKELEY WILSON.

Adjourned to Monday, September 27th, at ten a. m.

Met and adjourned, by agreement of parties, to September 30th, 1869, at ten o'clock a. m.

SEPTEMBER 30TH, 1869, *at ten o'clock a. m.*

George W. Stanton, jr., recalled by Mr. Grant:

1 int. When did you become a director in the Mississippi and Missouri Railroad Company?

A. 1865. I think that was the year; a short time previous to the sale.

2 int. You were elected previous to the sale?

A. Yes, sir.

3 int. Besides being a director, what other position did you hold?

A. I was elected vice-president.

Int. And also a member of the executive committee?

A. Yes, sir.

4 int. Have you any memoranda by which you can tell us the number and amount of assenting bond and stock holders to what is called the Peter Meyers agreement?

A. That is the aggregate amount, I suppose?

5 int. Yes, sir.

A. Yes, sir; I think it was (referring to paper) five million two hundred and forty thousand six hundred & seventy-nine dollars and some odd cents.

6 int. Have you the number of each class?

A. I have not, sir.

7 int. The number of each class of bonds & the number of the stockholders will appear from the books?

A. Yes, sir.

8 int. How many bonds and how much stock that was not assenting to the Peter Meyers agreement?

A. Two hundred and fifty-nine thousand three hundred and twenty-one dollars; there may have been some odd cents.

9 int. That means of both?

A. Yes, sir.

10 int. That would be both according to the scale?

405 A. According to the scale; yes, sir. They had to give us five millions five hundred thousand dollars for the road, and there were bond and stock holders to the amount of five million two hundred and forty thousand six hundred & *and* seventy-nine dollars, according to the scale, leaving a balance of two hundred and fifty nine thousand three hundred and twenty-one dollars, and possibly some odd cents.

11 int. I beg leave to call your attention to the distribution of this according to the indorsement of the trust company's certificates, in which is contained the number of the various bonds, and the number of the shares of stock. (Hands paper to witness.)

A. Yes, sir.

12 int. And I would thank you to put the amount that was indorsed in, if not already in the papers somewhere. Please furnish us a copy.

(Question waived, as it is upon the copy of the trust company's books, which the parties intend to put in evidence.)

13 int. Attention is called to an exhibit attached to Mr. Elliott's deposition of the first of August, 1866, whereby the trustees agree with The Chicago, Rock Island and Pacific Railroad Company to appoint them their agents for the distribution of bonds under the sale of the first of November, 1865, and which says they would distribute a certain interest in a contingency. Do you remember what interest that was?

A. Under the agreement of sale there had accumulated nine months' interest, of which they paid six months' interest; they paid that to everybody they settled with; I don't know whether they settled with the whole or not.

Int. That left in their hands three months' interest?

A. Yes, sir.

14 int. Is that the interest referred to in that contract?

A. Yes, sir.

15 int. Was there a loan of five *million* dollars by The Chicago & Rock Island Railroad Company to The Mississippi and Missouri Railroad Company in*to* existence when you came into office?

A. Yes, sir.

16 int. Was that loan settled; if so, when and how, while you were in office?

A. It was settled—I have forgotten the date—by the direction of the executive committee. The bonds held by The Chicago and Rock Island Road, as security, were released to the R. I. Road at sixty-two and one-half cents, on the twenty-first of December, 1865.

(Plaintiffs object to so much of answer as sets out action of the board of directors of the railroad company, because it sets out the contents of a written record.)

17 int. Please examine the proceedings of the executive committee of The Mississippi and Missouri Railroad Company, and Chicago and Rock Island Railroad Company, which are set out in the stipulation of the

parties in this cause, & state if they give a history of the said loan and its manner of settlement.

A. Yes, sir.

18 int. At the time of the surrender or release of the equity of redemption on the bonds deposited as collateral security for that loan, what was said or done by The Chicago and Rock Island Road, or The Mississippi and Missouri Railroad Company, in relation to unpaid interest on the said loan?

A. I don't recollect that anything particular was said about it, but it was my distinct understanding that they were to deposit
406 the bonds with the trust company and receive their proportion in full of their claim of the five *million* dollars.

19 int. They were to receive the bonds in full of the discharge of the debt, and deposit them in the trust company.

A. I distinctly mean to say so; our loan was sixty-two and a half cents; they were to receive from the trust company seventy per cent.

20 int. Was any statement made to you or any of the members of the board of Mississippi and Missouri Railroad Company, that the c'upons of those bonds which were hypothecated for that loan due in November, 1864, were to be cut off?

A. No, sir.

21 int. When did you first hear that they were cut off?

A. I heard nothing about any claim until within the last two or three months.

22 int. Has the interest which was referred to in the contract of the first of August, 1865, between the Stanton committee and The Chicago, Rock Island and Pacific Company ever been paid?

A. Six months' interest on the five million five hundred thousand dollars was paid, and three months' interest not paid. This relates to the interest accrued at the date of the bonds—the bonds issued for the purchase of the Mississippi and Missouri Railroad—under the contract of November first, 1865.

23 int. I mean the amount therein reserved ever been paid?

A. No, sir.

24 int. Who had charge of the business of the Mississippi and Missouri Railroad after you came into the office—the directors or the executive committee?

A. The executive committee had the principal charge.

Cross-examined by Mr. Withrow:

1 int. About what time in the year did you become a director in the Mississippi and Missouri Railroad Company?

A. I think the election was in May or June.

2 int. State whether or not you were elected at a regular election.

A. I believe I was, sir.

3 int. State whether or not The Mississippi & Missouri Railroad Company was in default in the payment of the interest on the loan of five million dollars to The Chicago & Rock Island Railroad Company at the time you were elected.

A. That I can't say; I don't know whether they were or not; there was a stateme't made by Mr. Cook at the time; in that printed statement he did not mention any *printed* default in that road except a certain balance; he made a statement of the entire indebtedness; he says nothing about any loan or any interest due on that five million dollars.

(Objected to—1st. It sets out the contents of a written record; 2nd. It is hearsay evidence; 3rd. It is not responsive.)

4 int. When did you first learn, as an officer of the Mississippi and Missouri Railroad Company, that the matured interest on the loan of five million dollars was not paid nor any portion of it?

A. I don't know that I ever learned there was any interest due on it. I have no recollection of it.

5 int. You say in your examination-in-chief that it was distinctly understood that the eight hundred bonds were accepted in full payment of the loan of five *million* dollars?

A. I understood it so, sir.

407 6 int. State whether or not the bonds and attached c'upons were understood to be in payment of both the principal and interest remaining due of the five *million* dollars loan.

A. I so understood it, sir.

7 int. State whether or not you have any recollection of anything being said upon that subject at any time by any of the parties to the negociation.

A. About the back interest—about the eight hundred thousand dollar bonds?

8 int. Yes, sir.

A. I have no recollection of anything being said, sir. It couldn't be so, because he certainly could not allow them to receive seventy cents; there was only sixty-two and a half cents loaned, and then have to charge interest besides.

9 int. State whether or not there was any other contract or agreement entered into between the parties in reference to the loan of five *million* dollars than that set out in the records, copies of which have been exhibited to you in the stipulation of the parties.

A. The agreement just read?

10 int. Yes, sir.

A. I have no recollection of anything about it.

11 int. You say that nothing was said in regard to cutting off the November c'upons, and reserving them for the matured interest?

A. No, sir; nothing of the kind.

12 int. In the surrender of bonds to the trust company, under the Peter Meyers agreement, what was treated as a par first mortgage construction bond—I mean by that bonds for a thousand dollars; did you issue certificates for a thousand or seventy per cent, on a thousand; what c'upons were necessary to make a thousand-dollar bond?

A. Seventy per cent. on the face of the bond; on a thousand dollar bond all they got was seventy cents; back c'upons went in.

13 int. State whether or not that was without ref'rence to the number of c'upons that were attached to the bond.

A. I think it was, sir; but my recollection is not distinct; I think it was, sir.

14 int. State whether or not you allowed more for a bond having the November, 1864, c'upons, and all subsequent c'upons appended, than you did for bonds having only the May, 1865, and subsequent c'upons appended.

A. Well, I can't state that distinctly; I think not, however. I cannot state positively about that, because, I think, the c'upons previous to that were all settled, with the exception of the Rock Island, and I suppose the Rock Island bonds were all settled; I have no distinct recollection.

15 int. State whether any severed c'upons were surrendered to the trust company.

A. I can't tell about that; the book will tell that. I can't tell.

16 int. You have stated that the assenting bonds were five million two hundred and forty thousand six hundred and seventy-nine dollars?

A. Bonds and stocks; the whole amount deposited in the trust company, according to the scale, answer.

17 int. State the entire amount of the bonds and debt of The Mississippi & Missouri Railroad Company at the time of the foreclosure of the mortgage.

A. I shall have to go into figures to add it all up; it will tell from the scrip.

408 18 int. I mean in round figures; about seven millions, was it not?

A. I think seven millions altogether.

19 int. Do you remember now what amount of pending bonded debt there was?

A. I can't say.

20 int. You said you received five million five hundred thousand dollars for the property of The Mississippi & Missouri Railroad Company.

A. Yes, sir.

21 int. That the assenting bonds and stock amounted to five million two hundred and forty thousand six hundred and seventy-nine dollars?

A. That is, according to the scale; the gross amount, of course, was more than that.

Int. Leaving a difference of two hundred and fifty-nine thousand three hundred and twenty-one dollars?

A. Yes, sir; according to the scale.

22 int. State what disposition was to be made of this difference.

A. The Chicago and Rock Island were to settle that, sir; it was argued, on the part of some, if they hadn't assented they would cut off entirely; they were to settle the whole thing.

23 int. Was there any agreement as to the manner in which it should be settled?

A. No, sir.

24 int. Was there any agreement as to what should be done with this difference, after settling the non-assenting bonds?

A. It was referred to The Chicago Rock Island and Pacific Railroad Company, and they were to settle the whole thing up; if there was any arrangement how it was settled, I don't know anything about it.

25 int. Was there ever any understanding or conversation between the Stanton committee and the officers of the Chicago, Rock Island and Pacific Railroad Company, as to the application that should be made of this difference after satisfying the holders of assenting and non-assenting bonds?

A. Can't say that there was any on the part of the committee. The conversation I had with Mr. Cook, he asked the question of me after settling off all these people, if there was anything left, whether it might go to the payment of the claim they had paid James. I told them that as far as I was concerned individually, I hadn't the least objection, but the other members of the committee had not agreed to it, and I merely gave it as my individual sanction.

26 int. State whether any one of the members of the committee were present at the time this conversation occurred.

A. No, sir, they were not.

27 int. Do you know of any conversation that the other members of the committee had with the officers of the Chicago, Rock Island and Pacific Railroad Company relating to the same subject, from statements made to you?

A. No, sir; I don't know that they ever had any.

28 int. What was this James matter that you refer to?

A. It was a claim on the second mortgage land-grant bonds. We allowed them thirty per cent. Mr. James and his associates were dissatisfied, and commenced a suit. That is all I know about it. They commenced a suit to get more, or to stop the proceedings. I believe they did for a certain time.

409 29 int. Was this suit commenced by the holders of the James bonds after the execution of the Meyers agreement by the Stanton committee, and a portion of the bond and stock holders?

A. It was about the time; whether it was before I can't recollect.

30 int. You may state whether or not The Chicago, Rock Island and Pacific Railroad Company purchased the James bonds.

A. I understood they did, sir.

31 int. State whether or not they paid more than the scale price.

A. I understood they did, sir; but I don't know that it is a fact.

32 int. For what purpose did they make the purchase?

A. I suppose for the object of having this arrangement of the committee and themselves carried out.

33 int. Did you understand at the time that The Chicago, Rock Island and Pacific Railroad Company made this purchase for the purpose of enabling the committee to execute its agreement with the stock and bond holders, and also to enable The Mississippi and Missouri Railroad Company to execute its agreement with The Chicago, Rock Island and Pacific Railroad Company, bearing date November first, 1865?

A. I don't know the fact, but I suppose that was the object.

34 int. State whether or not that was the understanding of the parties at the time.

A. I don't know whether the committee had any understanding with the Rock Island at all, sir.

35 int. State whether or not the committee and The Mississippi and Missouri Railroad Company had control of a sufficient amount of bonds of the different classes to enable it and The Mississippi and Missouri Railroad Company to execute those contracts with The Chicago and Rock Island Company, and the bond and stock holders.

A. How was that?

36 int. State whether or not before the purchase of these bonds, the committee had control of enough of the bonds of different classes to enable it, and to enable The Mississippi and Missouri Railroad Company to perform their contracts, the one with The Chicago and Rock Island Company, and the other with the bond and stock holders.

A. I don't recollect, sir; my impression is that we hadn't enough. I don't recollect anything about it.

37 int. You may state when the committee acquired control of the suit pending in the circuit court of the United States, district of Iowa, for the foreclosure of the mortgages.

A. I can't tell you the date, sir. It is a mere matter of record.

38 int. Then I understand you to say that there has not been any understanding between the committee and The Chicago, Rock Island and Pacific Railroad Company, as to the disposition that should be made of this difference of two hundred and fifty-nine thousand three hundred and twenty-one dollars?

A. Nothing further than they were to settle up all claims of non-assenting stock & bond holders and the assenting stockholders.

39 int. Was it understood by the committee at the time the contract of the first of August, 1866, was executed, that after issuing its new

bonds to the assenting bond and stock holders, and settling with the non-assenting stockholders, that there would probably be a difference remaining in the hands of The Chicago, Rock Island and Pacific Railroad Company?

A. Yes, sir; I understood it so.

410 40 int. And with that understanding the committee entered into the contract of August first, 1866, without making any provision for the disposition of that difference?

A. No, sir; I think that nothing was said on the first of August about it.

41 int. Was there any subsequent agreement made between The Chicago, Rock Island and Pacific Railroad Company and the committee in reference to the disposition of that difference?

A. Not that I recollect, sir; anything further than the conversation I had with Mr. Tracy and several of the directors.

42 int. From what source were the expenses of executing the trusts in the several mortgages, the expenses and fees of the Stanton committee, and the costs of foreclosure to be paid?

A. It was to be paid out of the thirty-two-thousand-dollar reserve, and if anything more, out of the interest that might accumulate on the five million five hundred thousand dollars.

43 int. With whom was the contract or contracts for rerewing this three months' interest out of the nine months' interest accrued at the date of the bonds made?

A. There was no contract made; there was a conversation with Mr. Tracy. I think Mr. Dows was present, and several of the directors; I went in there, and I made the arrangement myself.

43 int. Was it a contract with the Stanton committee and The Chicago, Rock Island and Pacific Railroad Company, or between The Chicago, Rock Island and Pacific Railroad Company and the holders of the certificates?

A. It was with the committee, as a matter of course; it was optional with the holders of the certificates whether they take the three and a half per cent., or wait till the close of this suit, &c.

43½ int. Was that contract in writing?

A. I think not, sir; it was merely a conversation.

44 int. State whether or not the committee had any power to bring the holders of the certificates of the trust company to an agreement to except six months' interest instead of nine months' interest.

A. No; I think not.

45 int. Was there any evidence of the right of the parties to receive this interest executed by the Stanton committee, or by The Chicago, Rock Island and Pacific Railroad Company?

A. Any right, sir?

46 int. Any evidence in writing of the rights of parties?

A. There was an agreement; they had to pay the interest of the five million five hundred thousand dollars.

47 int. Did not they issue scrip for this interest directly to the holders of the certificates?

A. I rather think not, sir; no, sir.

48 int. I mean the nine months' interest that accrued *for* the date of the bonds.

A. I am not positive. I think the holders of the certificates, when they went into Rock Island office, took the three and a half per cent., or waited; it is possible that they may have issued some scrip, but I am not aware of it.

49 int. Were there any certificates issued for the whole nine months' interest?

Ans. They paid six months' interest in cash.

50 int. In this contract between the Stanton committee and The
411 Chicago, Rock Island and Pacific Railroad Company, relating to the reservation of this interest, where was it made, and who was present?

A. I don't recollect that any of the committee was present, except myself. I think it was Mr. Tracy, on the part of The Chicago, Rock Island, and Pacific Railroad Company. Mr. Dows was present and several others I have forgotten. My recollection is more definite in regard to it because they only wanted to pay three per cent., and I told them I thought they could easily afford three and one-half, and submitted a statement which I have a copy of; they consented to three and a half per cent.

50½ int. Where was this conversation?

A. At one time in the Chicago and Rock Island office; I don't know anywhere else. I presented the copied statement. It was in the Chicago and Rock Island office.

51 int. You say there was no memorandum in writing made between this committee and the railroad company?

A. I have no recollection of any at all.

52 int. Do I understand the agreement to be that when the holders of the trust company's certificates were willing to accept three and one half per cent., or six months' interest, that the railroad company was authorized to pay it by the committee?

A. What railroad company?

53 int. Rock Island and Pacific.

A. They did pay it. I don't know the authority. It was not for the committee to say; it was *by* the holders of the certificates whether they would accept it or not.

54. int. Well, when the holders of the certificates were willing to accept it, it was agreed that the railroad company, as the agents of the committee, should pay it?

A. Yes, sir; I think it was.

55 int. Who assumed the risk of loss, if the sum reserved should not be sufficient to meet the expenses provided for?

(Objected to, as it appears by the contract of August first who was to loose it.)

A. The Chicago, Rock Island and Pacific Railroad Company.

56 int. Was it expressly understood that the Stanton committee should not be liable for any expenses provided for in the contract in the event of the fund reserved from this interest being insufficient?

(Objected to, as the contract explains.)

A. Yes, sir.

57 int. Were the arrangements relating to the payment of three and a half per cent., or six months' interest of the nine months' interest accrued at the time of the date of the bonds, made by the Stanton committee and The Chicago and Rock Island Road?

A. I made the arrangement, but I presume by the consent of my associates.

58 int. Do you wish to be understood now as testifying that this arrangement was an arrangement between the Stanton committee and the railroad company?

A. In relation to the interest you mean?

59 int. Yes, sir; the interest.

A. Yes, sir; I think so, sir.

Int. State whether or not the other members of the committee were ever advised of that arrangement, and whether or not they ratified it and approved it.

A. I think they were advised of it, sir.

412 60 int. State whether or not they approved it.

A. I presume so, because Mr. Elliott and Mr. Wilson took the three and a half per cent.

61 int, What was the understanding at the time this arrangement was made as to what should be done with so much of the interest reserved as remained after the payment of all the expenses, foreclosure, and other expenses, provided for in the contract?

A. I can't say at the time this arrangement was made, any definite understanding was made in regard to it, but my understanding was, if there was anything left, they could apply it towards the purchase of those bonds of James, after paying all the outstanding liabilities of every name and nature, and relieving the committee from all liability in every way and shape.

62 int. Did you communicate that understanding to the other members of the committee?

A. I can't recollect now, sir, whether I did or not.

63 int. Have you ever heard the other members of the committee say anything in regard to the application of that portion of the fund?

A. No, sir; I don't think I have.

64 int. Was it your understanding that the non-assenting bonds should be provided for entirely out of this interest?

A. No, sir.

65 int. If that should not be sufficient, from what other fund was The Chicago, Rock Island and Pacific Railroad Company to draw in making provision?

A. Out of their own funds.

66 int. Were they to take anything out of the two hundred and fifty-nine thousand dollars, or thereabouts, that you say there was of difference between assenting bonds and stock, and the five million five hundred thousand dollars that was to be paid for the road?

A. To pay this interest? No.

67 int. If this should not be sufficient to pay expenses, and also provide for the non-assenting bonds and other claims, were they authorized to apply this difference of two hundred and fifty-nine thousand three hundred & twenty-one dollars to the satisfaction of the non-assenting bonds and other claims?

A. Well, the two hundred and fifty-nine thousand dollars were bonds and stocks not assented.

68 int. Was The Chicago, Rock Island and Pacific Railroad Company authorized to apply so much as should be sufficient of this two hundred and fifty-nine thousand three hundred & twenty-one dollars to the satisfaction of the non-assenting bonds?

A. Yes, sir; they had two hundred and fifty-nine thousand dollars in bonds in their own hands, besides this interest.

69 int. They were to apply that to the satisfaction of the non-assenting bonds & stock?

A. Yes, sir.

70 int. Now, if after settling with the non-assenting bond and stock holders, it should be found that this sum was not sufficient, who was to make up the deficit?

A. The Chicago, Rock Island, & Pacific.

71 int. The committee were not to be liable?

A. No, sir.

72 int. If there should be a surplus, after satisfying the bond and stock holders, remaining of the fund created by the reservation of this
413 interest and this difference of two hundred and fifty-nine thousand dollars, what disposition was to be made of that?

A. Well, according to my understanding, if there was any balance left they were to apply towards the purchase of these bonds of James. I don't know whether the other members of the commlttee consented to that, but I consented, so far as I am individually concerned.

73 int. Were the other members of this committee present when this conversation occurred in regard to the application of these funds?

A. I don't think they were. The conversation I had was with Mr. Cook.

74 int. Have you had any other conversation with the other members of the committee in relation to that matter?

A. I think I told them my conversation at the time.

75 int. State whether they approved or disapproved it.

A. They did'nt say anything, one way or the other.

76 int. Did not say anything about it?

A. No, sir.

Adjourned until to-morrow, October 1st, at 10 o'clock a. m.

George W. Stanton, jr., recalled: Examined by Mr. Grant.

1 int. Mr. Withrow, in his interrogatories to you, has spoken of a contract or agreement in relation to the application of the reserved interest, and the two hundred and fifty-nine thousand dollars for non-assenting bonds. I ask you, was that a contract or mere conversation?

A. Mere conversation.

2 int. When did that conversation take place?

A. I can't tell you; I don't recollect the time.

3 int. Was it after the agreement of the first of August between the committee and The Rock Island and Pacific Railroad Company?

A. Yes, sir; it was about the time they were taking up the receipts for the trust company, or just before that; yes, just before that, it must have been. It was after having this conversation if the holders of the certificates of the trust company were willing to receive the three and a half per cent., they were to pay it; so it must have been just before that time.

5 int. You were desirous of getting The Rock Island Company to pay as much interest on the five million five hundred thousand dollars as possible?

A. Of course; I was interested directly.

6 int. Did you have this conversation with Mr. Tracy?

A. Yes, sir; I think I did.

7 int. Did you make to him any showing, by figures, with which he could by safety pay?

A. Yes, sir; I made out the figures, and left it with him.

8 int. Have you a copy of it?

A. Yes, sir

8½ int.

Memorandum produced, of which the following is a copy:

"Interest on $5,500,000, 9 months		$288,750 00
"Amount of purchase	$5,500,000	
"Amount of trust company receipts issued to bond and stock holders	5,240,679	
		$259,321 00
414 "Amount to be paid by the C. & R. I Co. towards foreclosure		5,000 00
		$553,071 00
"Amount paid, foreclosure, suits, trustees, and stamp for deed	$18,059 70	
5,500,000		
259,321		
$5,240,679, interest on 3½	183,423 78	
		201,483 48
		$351,587 52

"Leaving balance on hand of The Chicago, Rock Island and Pacific Railroad Company of $351,587 52 to pay the committee and the non-assenting bond and stock holders."

9 int. You have used an expression on this memorandum, "Amount to be paid by the C. & R. I. R. R. Co. towards foreclosure, $5,000." Explain that.

A. That was a verbal understanding. We had nothing in writing about it, but they consented to pay five thousand dollars towards the expenses of the foreclosure. It was never put in writing. We didn't know whether we would have funds enough. There was a small amount reserved. Couldn't tell exactly.

10 int. Then you made out to Mr. Tracy, after paying six months' interest out of the nine months, they would have on hand to meet all contingencies three hundred and fifty-one thousand dollars?

A. Yes, sir; to pay the committee and the non-assenting bond and stock holders.

11. int. Upon that representation did The Chicago, Rock Island and Pacific Railroad Company pay to these persons?

A. After making that statement to them, they agreed to three and a half per cent., if the holders of these certificates would receive; if not, to hold the certificates until the suit was terminated.

12 int. Mr. Withrow has put to you a question about the purchase of the James bonds. Did not The Chicago and Rock Island Company purchase those bonds on their own account, in order that they might put them in this Peter Meyers' agreement, and insure the foreclosure of the road?

A. Yes, sir; I think I can say so. This suit of James' stopped our proceedings entirely. It was essential to get them out of the way, and they purchased the bonds; afterwards put them in, and delivered them to the trust company, and took their receipt.

13 int. Mr. James, then, was proceeding to foreclose, as a hostile act, to the purchase by The Rock Island Road of the Mississippi and Missouri Railroad?

A. He commenced a suit—he was dissatisfied.

14 int. And The Chicago and Rock Island Company purchased his bonds?

A. Yes, sir.

15 int. When was this conversation of yours with the agents of the Rock Island Company, in which you informed them that you were a member of the committee; were willing, if they would pay all the outstanding claims of stock and bond holders, and there should be
415 any overplus, that they would use it for the loss on the purchase of the James bonds?

A. That was previous to the purchase of the James bonds. I can't give you the date, but it was previous to the purchase of the James bonds.

16 int. It was prior to the agreement of August first, 1866, between the committee and The Chicago and Rock Island Company?

A. Yes, sir; as a matter of course, it must have been before that.

17 int. I believe we understood from yesterday's examination that the trust company gave no receipts for any c'upons independent of the bonds. I ask you if you have refreshed your memory from memoranda, and can testify more exactly upon that subject?

A. Yes, sir; I have.

18 int. Be kind enough to state what was the fact in relation to it.

A. The only receipt that the trust company gave, to my knowledge and according to the memorandum which I took at the time when I delivered up the bonds, was for two c'upons for May 8th, 1864, on bonds 1901 and 1902, of seventy dollars. If my recollection serves me right, I spoke to Mr. Cook, who said it was so small, let it go The holder gave it to the trust company and got a receipt for forty-nine dollars. We wouldn't acknowledge the c'upons of 1864. I have a memorandum here prepared at the time the bonds were delivered up of five c'upons of land-grant bonds due May 8th, 1864; 16 of November 8, 1864; and four of income land-grant bonds of November 5th, 1864. Mr. Frothingham gave no receipt for them, & waited upon the committee to see if they would allow these bonds. My recollection is that it is still left with the trust company. We couldn't acknowledge them, and I presume he has them yet.

19 int. How happened Mr. Frothingham to make the receipt for those two c'upons?

A. It was an error; probably he didn't see or think of it—very apt to, where there is such a multiplicity of things.

20 int. Do you know of any contract of any kind modifying the contract of August first, 1866, between The Chicago, Rock Island and Pacific Railroad Company and The Stanton committee?

A. No, sir.

Examined by Mr. Withrow:

1 int. You may state whether or not your testimony relating to the twenty-five c'upons, which you say you left with the trust company, is upon your own recollection of the facts, or entirely from the memorandum which you so set forth.

A. It is from a recollection of the facts; that memorandum was made at the time when we delivered up the bonds.

2 int. To whom do those c'upons belong?

A. I can't say, sir; Mr. Frothingham can tell; we left them with him to deliver up to the owners; we would not allow them.

3 int. Did the committee refuse to allow the payment of any c'upons upon the land-grant first mortgage construction bonds?

A. Yes, sir; I think so, sir; that is my impression; there were only two c'upons already referred to.

3½ int. Were bonds, having the November, 1864, c'upons attached, treated the same as bonds having only the May and subsequent c'upons attached?

A. Yes, sir. I believe so, sir.

4 int. So that a man could get no more for a bond having the
416 November, 1864, c'upons appended than he could for a bond having the May c'upons?

A. No, sir.

5 int. State under what contract or agreement this rule was adopted.

A. Well, we understood it under the Peter Meyers agreement.

6 int. You may state whether or not the committee requested The Rock Island Railroad Company to purchase the James bonds?

A. No, sir; at least, I never did.

7 int. State whether or not the matter was ever discussed between the committee and the officers of the Chicago and Rock Island Railroad Company.

A. No, sir; I had a conversation with Mr. Cook about it; and if there was anything left after paying the non-assenting bond & stock holders, and closing up the whole thing, I had no objection that the Rock Island should have it.

8 int. You say this conversation regarding the application of the surplus to reimbusing them for what they would loose for the purchase of the James bonds, was before the purchase of the bonds?

A. Yes, sir; my interview with Mr. Cook was before that.

9 int. Was it after the foreclosure suit had been commenced by James?

A. Oh, yes.

10 int. You may state whether or not that purchase enabled the committee to take control of that foreclosure suit; and whether or not the committee did take control of it after the surrender of those bonds.

A. Take control of that James suit? I don't know how that was done; all I know that the bonds were delivered up by The Chicago and Rock Island Road.

11 int. State whether or not the committee had charge of the foreclosure suit before the purchase of the James bonds?

A. I think the foreclosure had not commenced yet, sir; we hadn't bonds enough.

12 int. James commenced to foreclose that mortgage?

A. Yes, sir.

12 int. When The Rock Island Company bought these bonds, and surrendered them, that gave the committee the control of that series of bonds; then you came in and directed the trustees in the other mortgages to file a cross-bill, and you had both sides of the case really?

A. I don't recollect anything about how that was.

13 I. What amount was there of the James bonds?

A. That I can't tell you, sir; I don't know how many bonds they had.

14 int. What series of bonds did they belong to?

A. It was the second mortgage land grant.

15 I. That was over the entire road?

A. I think it did, sir, cover the entire road.

16 I. In the memorandum which you have furnished, to be set out as an exhibit, is the following item, "leaving balance in the hands of The Chicago, Rock Island & Pacific Railroad Company of $351,587 52 to pay the committee and the non-assenting bond and stock holders;" what payment was to be made to the committee?

A. Twenty-one thousand dollars.

17 int. What was that for?

A. For their services, sir.

18 I. In executing their trust?

A. In executing their trust; yes, sir.

19 I. State whether or not that has been paid?

417 A. Yes, sir; I received my seven thousand dollars in bonds; and I presume the other gentlemen did.

20 I. When was this memorandum delivered to Mr. Tracy?

A. I can't tell you the date, sir; let me see—just before they commenced taking up the receipts of the Union Trust Company?

21 I. Do you remember who was present at the time the conversation occurred?

A. I know Mr. Tracy was. I think Mr. Dows was present, and there were one or two others.

22 int. State whether or not Mr. Cook was present?

A. That I don't recollect, whether he was or not.

23 I. Were the other members of the committee present?

A. Those of our committee you mean?

24 int. Yes, sir.

A. No, sir; they were not present.

25 I. State whether or not you showed this or a copy of it to the Stanton committee?

A. I presume I did; I don't recollect anything about it.

26 I. State whether or not you ever had any conversation with them, in which you told them you would furnish Mr. Tracy with that memorandum?

A. I cannot recollect about it.

27 I. Do you recollect any conversation with the other members of the committee in regard to the subject-matter of this memorandum?

A. No, sir; I have no recollection of that kind.

28 I. State whether or not there has ever been any conversation between you and the other members of the committee in regard to the application of this surplus that should remain?

A. I don't recollect; it was a mere memorandum to show that they could pay the three and a half per cent. without any detriment to themselves.

29 I. You wish to be understood, now, in saying that there was no agreement between The Chicago, Rock Island and Pacific Railroad Company and the Stanton committee, authorizing the railroad company to reserve the three months interest, it was a mere matter of suggestion on 'our part to the railroad company

A. Yes, sir.

G. W. STANTON, J'R.

Adjourned till to-morrow, October second, 1869, at ten o'clock a. m.

Saturday, October second, 1869, at ten o'clock a. m. Examination continued.

BLAKELEY WILSON, being duly sworn, testified as follows: Q. by Mr. Grant.

1 int. When did you become a director in the Mississippi and Missouri Railroad Company?

A. I can't give the exact date; I was elected a director at the election previous to the sale of the road.

2 int. Have you any memorandum by *by* which you can tell the number and amount of the assenting bondholders of each class, and of the stockholders?

A. Yes sir.

2 I. Please furnish the amount?

A. I will, sir.

418	First mortgage, eastern division	$1,181,689 52
	Second " "	399,000 00
	Oskaloosa division	694,032 90
	1st mortgage land-grant bonds	3,775,579 88
	2nd " " " "	668,111 85
	Stock	2,811,000 00

4 I. Does that statement include the income bonds and scrip which could assent under the Peter Meyers contract?

A. It does.

5 I. Now give the amount of each class of non-assenting bonds, including income bonds and scrip.

A. First mortgage eastern division	$17,000 00
Income bonds	18,000 00
Interest thereon	2,450 00

The 2,450 item is six months' interest computed on the outstanding first mortgage and income bonds.

2nd mortgage eastern division	1,000 00
Oskaloosa "	16,906 10
Land-grant first mortgage bonds	45,000 00
Income bonds	60,000 00
Land-grant second mortgage	23,500 00
Scrip, about	1,900 00

6 int. Please state what would be the amount that these non-assenting bonds would be entitled to at their scale under the Peter Meyers agreement?

A. About one hundred and twenty-eight thousand dollars.

7 int. Have you any memorandum how much would be required to be paid out to meet the certificates of the trust company?

A. The total amount for the bonds of the Mississippi and Missouri Railroad Company is $4,790,733 66

For the stock 449,760 00

Making the aggregate 5,240,493 66

8 I. After paying the trust-company's certificates, amounting to about five million two hundred and forty thousand dollars, how much of the original purchase-money, five million five hundred thousand dollars, is on hand?

A. Two hundred and fifty-nine thousand five hundred and six dollars and thirty-four cents.

9 I. In paying out the trust company's certificates, were they paid in full, or was some part of it retained by The Chicago, Rock Island and Pacific Railroad Company?

A. The Chicago and Rock Island Company in paying out the Union Trust Company's certificates retained three months' interest on the amount of each certificate.

10 I. How much would that make so far as the bondholders are concerned?

A. According to my calculation it is eighty-three thousand eight hundred and thirty seven dollars & eighty-three cents.

11 I. Who has this sum of interest and the balance of the principal that was not paid on the non-assenting bonds, or into court, in Iowa?

A. The Chicago, Rock Island & Pacific Railroad Company.

12 I. How came they to have it?

419 A. It remained in their hands.

13 I. Why did it remain in their hands?

A. Because they only gave their bonds for the Union Trust Company's certificates; they acted as our agents in the distribution of the bonds.

14 I. When did you make them your agents?

A. We made them our agents by the agreement of August first, 1866?

15 I. Is that the paper referred to in Mr. Elliott's evidence?

A. Yes, sir; I believe it is. The contract of sale says that the parties were to deposit their bonds with the Union Trust Company, and they were to give their certificates.

16 I. What became of the books in the Union Trust Company's office?

A. They were loaned to The Chicago, Rock Island and Pacific Railroad Company.

17 I. At what time?

A. At the time they commenced the distribution of their bonds. I can't give the date.

18 I. Have those books ever been returned to the trust company?

A. No, sir.

19 I. Why not?

A. They have been demanded by the trust company and the committee, but The Chicago, Rock Island and Pacific Railroad Company refused.

20 I. When you came into office was there a loan from The Chicago and Rock Island Railroad Company to The Mississippi and Missouri Railroad Company; had there been this sum of money borrowed upon securities?

A. Yes, sir; some five hundred thousand dollars.

21 I. How was that loan settled?

A. They held as collateral for the loan eight hundred thousand dollars of first mortgage land-grant bonds, which was settled by The Mississippi and Missouri Company by allowing them to take the bonds in full settlement of whatever was due on the loan.

22 I. When was that?

A. The exact date?

23 I. Yes, sir.

A. I am unable to give it to you.

24 I. Are there any paper-writings that give it?

A. They are referred to in a written agreement of counsel in this cause.

25 I. At the time of that transaction what was said of The Chicago and Rock Island Company retaining the November c'upons on those bonds for the interest?

A. Nothing was said about it.

26 I. What agreement did The Rock Island Company make in relation to *with* those bonds when they took them in satisfaction of the debt?

A. They agreed that they would deposit them with the Union Trust Company, under the Peter Myers contract.

27 I. What was said about their cutting off the November c'upons?

A. Nothing.

28 I. Can you tell me anything about that paper? (Handing paper to witness.)

A. This paper is a copy of a statement of *a* financial position of The Mississippi and Missouri Railroad Company, made by E. Cook,
420 secretary of the company, at one of the first meetings of the board of directors of the Mississippi & Missouri Railroad Company, of which I was a member. The paper is as follows:

Statement of the bonded debt, past-due c'upons, convertible scrip, and interest due thereon to July first, 1865, of The Mississippi and Missouri Railroad Company, as shown by the books of the company in the treasurer's office at New York.

First mortgage, first division	$1,000,000 00	
Income bonds issued for funded c'upons upon the bonds of first mortgage	214,000 00	
Interest due July 1st, 1865	42,490 00	
		1,256,490 00
Second mortgage, first division	400,000 00	
Interest due July 1st, 1865	16,000 00	
		416,000 00
First mortgage, Oskaloosa division	590,000 00	
Income bonds issued for funded c'upons upon the bonds	73,000 00	
Scrip convertible into income bonds	2,939 30	
Interest on $663,000 due July 1st, 1865	23,205 00	
Interest on scrip from July 1st, 1863, to July 1st, 1865	411 00	
		689,555 80
Land-grant, first mortgage	3,612,000 00	
Income bonds issued for funded c'upons upon the land-grant bonds	253,500 00	
Scrip convertible into income bonds	12,550 99	
Accrued interest on $3,612,000 bonds up to July 1st, 1865	162,941 33	
Interest upon income bonds due July 1st, 1865	8,872,50	
Interest on scrip from May 8, 1864, to July 1st, 1865	1,005 47	
		4,050,870 29
Land-grant, 2nd mortgage	691,000 00	
Scrip convertible into second land-grant mortgage	2,764 35	
Interest on second mortgage bonds due July 1st, 1865	24,185 00	
Accrued interest on scrip to July 1st, 1865	387 00	
		718,336 35
January interest unpaid		14,000 00
Total amount bonded debt and accrued interest up to July first, 1855		7,145,252 44

421 OTHER LIABILITIES.

Due Chicago and Rock Island Railroad Company, claims arising since July 1st, 1858	$53,000
Due for construction west of Grinnell, besides what may be due T. C. Durant	15,000
Due on unpaid pay-rolls, and vouchers over amount cash on hand July first, (estimated)	30,000
Due on sundry judgments & claims, say	20,000
	118,000
Capital stock	3,452,300

LENGTH OF ROAD COMPLETED.

First division, from Davenport to Iowa City and Muscatine	67 miles.
Des Moines division, from Iowa City to Manning's Station	77 "
Oskaloosa division, from Muscatine to Washington	40 "
	184 miles.
Amount of land certified to the company—acres	481,405

Earnings and expenditures, 1864.

	Total earnings.	Operating expenses.	Construction.	Right of way.	Total expenditures.
January	28,404 42	20,323 73	229 27	.....	20,553 00
February	33,842 66	20,168 95	852 42	.....	21,021 37
March	42,091 07	19,047 16	1,074 98	851 45	20,973 59
April	42,438 46	20,954 37	1,223 83	619 50	22,797 70
May	39,728 48	22,653 89	2,183 15	330 00	25,167 04
June	34,986 52	29,370 79	1,839 37	45 00	31,255 16
July	35,170 80	26,570 80	3,623 97	300 00	30,494 77
August	48,206 69	30,572 18	5,681 37	48 35	36,302 10
September	73,612 00	32,007 12	3,919 46	107 40	36,033 98
October	71,811 74	31,305 96	3,890 25	50 00	35,246 21
November	73,515 42	42,228 14	4,014 57	1,400 00	47,642 71
December	70,869 25	38,170 03	3,842 96	200 00	42,212 99
	594,677 51	333,373 12	32,375 60	3,951 90	369,700 62
Mail service	8,531 81				
Grand total	603,209 32				

Total gross earnings	$603,209 32
Total expenditures at the west	$369,700 62
Net earnings	$233,508 70

Earnings & expenditures, 1865.

	Total earnings.	Total expenditures.
January	64,877 75	34,746 31
February	51,303 33	49,041 06
March	60,532 73	45,107 75
April	47,230 04	29,890 48
May, estimated	55,000 00	30,000 00
Mail service	3,554 92	.....
	282,498 77	188,785 60

422 Total gross earnings, five months of 1865..... $282,498 77
Total expenditures at the west, same time..... 188,785 60

Net earnings..... $93,713 17

29 int. What relation did Mr. Cook bear to the two companies at the time it was furnished?

A. Mr. Cook was a director and secretary of the Mississippi and Missouri Railroad Company, and a director of the Chicago and Rock Island Company.

30 I. I see on this paper a statement of January interest unpaid, fourteen thousand dollars, and an erasure of it; what is that erasure?

A. Because it was paid.

31 I. When and how?

A. Because it was paid. I can't give the exact date of payment; it was paid by Mr. Davis, the treasurer of Mississippi and Missouri Company.

32 int. I see also, under the head of other liabilities, "due Chicago and Rock Island Railroad Company on claims arising since July 1st, 1856, $53,000 00." Why was that erased?

A. Because it was paid.

33 int. When and how?

A. Paid by The Chicago and Rock Island Railroad Company, by moneys in their hands belonging to The Mississippi and Missouri Railroad Company.

34 int. How came they to have moneys in their hands belonging to the Mississippi and Missouri Company?

A. Because they were running the road previous to its coming into our possession..

35 int. I suppose, then, it was earnings above the expenses?

A. Earnings above the expenses.

36 int. I see another item "due for construction west of Grinnell, besides what may be due to T. C. Durant, $15,000." Why was that erased?

A. For the same reason.

37 I. I see also, "due on unpaid pay-rolls and vouchers over amount cash on hand July first, (estimated,) $30,000 00." Why was that erased?

A. For the same reason.

38 int. I see also, "due on sundry judgments and claims, say $20,000 00." What became of that?

A. Those were also paid.

39 int. I see also a statement of the earnings & expenses of the Mississippi and Missouri Railroad Company for 1865, in which the net earnings for five months are given at $93,713 17. What has become of those earnings?

A. Those earnings were used by The Chicago and Rock Island Company in payment of liabilities of The Mississippi & Missouri Railroad.

40 int. Did The Chicago and Rock Island Company render you any account of the earnings after the date of this paper?

A. No, sir.

41 int. Did they continue to operate the road for the balance of the year 1865?

A. They did.

42 int. Until what time?

423 A. Until the time the contract was entered into between the two companies for the sale of the road.

43 int. From that time they paid interest on the five million five hundred thousand dollars?

A. Yes, sir.

44 int. What agreement has been made, oral or otherwise, altering this agreement of the first of August, 1866, between the committee and The Chicago, Rock Island and Pacific Railroad Company?

A. None.

45 int. What was the assigned reason for retaining this three months' interest. Was there any outside paper?

A. The reason given by The Chicago, Rock Island and Pacific Railroad Company for their wish to retain it was that they thought they would need it in carrying out their agreement.

46 int. Was Mr. E. Cook a director of the Chicago and Rock Island Railroad Company as well as the Mississippi and Missouri Company?

A. He was.

Cross-examined by Mr. Withrow:

1 int. When and by whom was this reason assigned?

A. Of retaining this three months' interest? By the officers of the Chicago, Rock Island & Pacific Railroad Company.

2 I. Which one of the officers?

A. I don't recollect distinctly.

3 I. Where were the parties when this reason was assigned?

A. It might have been in this office or the office of the company. I can't say.

4 I. Who was present?

A. There was some one or more officers of the Chicago, Rock Island and Pacific Railroad Company and the committee.

5 I. Were all the committee present?

A. I can't say positively.

6 I. Did the committee consent to the reservation of this three months' interest?

A. They did not.

7 I. Did they object to it?

A. They did not; they did not consider it a matter they had anything to do with.

8 I. Between whom did the committee consider that matter must be settled?

A. Between The Chicago, Rock Island and Pacific Railroad Company, as agents of the committee, and the individual holders of the certificates of the Union Trust Company.

9 I. And the matter was left by the committee to be determined by contract between the company and each holder of the certificates?

A. It was left with the Chicago and Rock Island Company, as agents of the committee, and holders of the Union Trust Company certificates.

10 I. In what manner was it said that it would be necessary to reserve that interest in carrying out that agreement; what particular reason was assigned for the necessity of having it for carrying out their agreement?

A. I don't know any particular reason was assigned; the matter stood in this way: According to the agreement of the committee
424 and the holders of the Union Trust Company's certificates, the latter were not entitled to demand the payment of their interest until

all the liabilities of the committee or their agents, under the Peter Meyers contract, might be fully discharged.

11 I. Did the railroad company propose to preserve those three months' interest in consideration of its assuming the liability for the expenses for the foreclosure?

A. No, sir.

12 I. Was there any understanding as to who should be liable for any deficit, if the amount reserved should not be sufficient to pay the expenses, if the railroad company should make the payment of six months' interest?

A. No, sir.

13 I. Then I understand you to say that there was no understanding at all between the committee and the railroad company in regard to this reservation of interest?

A. None with the committee.

14 I. You say in reference to the alleged statement of the financial condition of the Mississippi and Missouri Railroad Company, prepared by Mr. Cook, that the item of January interest, fourteen thousand dollars, had been paid.

A. Yes, sir.

15 I. How do you know it was paid?

A. I know it was paid from the information of Mr. Davis, the treasurer of the Mississippi and Missouri Railroad Company.

16 I. Is that the only information you have on that subject?

A. I don't know that I want any other.

17 I. Did you not pay any of it, or see any of it paid?

A. What do you mean by asking whether I paid individually, or the committee paid?

18 I. Did you personally see any of it paid?

A. As a director of the Mississippi and Missouri Company, I know that interest was paid.

19 I. Please state how you know it.

A. I know from information received from the treasurer of the company, officially.

20 I. How do you know in regard to the item of fifty-three thousand dollars?

A. By information from Mr. Cook, the secretary of the Mississippi & Missouri Railroad Company; a communication by him, officially to the directors of the Mississippi and Missouri Railroad Company.

21 I. Is that the only information you have on that point?

A. I have not other.

22 I. How do you know that the item of $15,000 *is* due for construction west of Grinnell was paid?

A. In the same way.

23 I. And in no other way?

A. I think not.

24 I. How do you know in regard to the $30,000 due on unpaid payrolls and vouchers?

A. In the same way.

25 I. How do you know that the item of $20,000, due on sundry judgments and claims, was paid?

A. I think that was in the same way also.

26 I. By information from Mr. Cook?

A. Yes, sir.

425 27 I. When did you receive that information?

A. I can't give you the exact date.

28 I. You say that the books of the Union Trust Company are in the hands of The Chicago, Rock Island and Pacific Railroad Company. What information have you upon that subject; what are your sources of information?

A. The sources of information are Mr. Tows, of the Chicago, Rock Island and Pacific Railroad Company.

29 I. Is that the only source of information?

A. I know from the president of the Union Trust Company, that the books were delivered by him to The Chicago, Rock Island and Pacific Railroad Company, and never returned.

30 I. Is there any other source of information than these two?

A. I don't know that there is.

31 I. Did Mr. Tows tell you what books were surrendered to the railroad company?

A. No, sir.

32 I. How do you know that those books have been demanded of the railroad company, and their return refused?

A. I made the demand myself.

33 I. Who did you make the demand of?

A. Mr. Tows and Mr. Tracy, at the office of the Chicago and Rock Island Company. I made the demand in company with Mr. Elliott.

34 I. What reason did they assign for not returning them?

A. None.

35 I. At the time you made this demand, was the railroad company your agents for the execution of this trust?

A. They were not.

36 I. Had they ever been your agents?

A. Yes, sir.

37 I. By what contract were they made your agents to execute that trust?

A. They were made our agents by the contract of August first, 1866, for the purposes therein stated.

38 I. Have they ever resigned the agency you conferred upon them?

A. No, sir.

39 I. Has it ever been revoked?

A. We notified them that we had no further need of their services.

40 I. When did you give them that notice?

A. I can't give you the exact date.

41 I. Before or after you made this demand?

A. Before, I think it was. I am not quite sure if it was.

42 I. What was the purpose for which that agency was created?

A. For the purposes stated in the contract creating it.

43 I. All purposes appear upon the face of that contract?

A. So I understand it.

44 I. At the time of the negociation between the commiitee and the railroad company for the creation of that agency, was anything said of the amount that the railroad company had lost by the purchase of the James bonds?

A. No, sir; not to my knowledge.

45 I. Had there at any time been anything said to you or to any member of the committtee in your presence, in regard to reimbursing the railroad company in any manner with the amount it had lost in the purchase of the James bonds?

426 A. No, sir.

46 I. Has any member of the committee ever said anything to you in regard to any method of reimbursing the railroad company?

A. No, sir.

47 I. Did George W. Stanton, jr., ever show you a memorandum which he has delivered to Mr. Tracy, a copy of which is set out in his cross-examination, and to which your attention is now called?

(Memorandum handed to witness.)

A. Yes, sir.

48 I. When was it Mr. Stanton showed you that memorandum?

A. Day before yesterday.

49 I. You never saw it before?

A. Not to my recollection.

50 I. You mean to say that the subject-matter of reimbursing The Chicago, Rock Island and Pacific Company, or The Chicago and Rock Island Company, for the amount it lost in the James bonds, was never discussed in your presence by any officer of the railroad company, or by any member of the committee?

A. I mean to say that the subject-matter of the committee reimbursing or making any arrangement by which The Chicago and Rock Island Company should be reimbursed, was not discussed.

51 I. In any way—do not limit it to any particular method—should be reimbursed in any way?

A. I never had any conversation with any one of the committee—never on that subject.

52 I. Was the matter of reimbursing the Chicago, Rock Island, or Chicago, Rock Island and Pacific Railroad Company for the amount it lost by the purchase of the James bonds, ever discussed in your presence by any member of the committee, or by any officer or either of said railroad companys?

A. The manner in which they should be reimbursed?

53 I. The matter of reimbursing—was the matter ever talked of in your presence by any officer of either of these railroad companys?

A. I have heard some of the Chicago and Rock Island people speak of the manner in which they supposed they might be able to be reimbursed, but it was never a matter in which the committee had anything to do, or a subject of understanding or agreement with the committee at all.

54 I. When and where did that conversation occur?

A. I can't say, sir, with any exactness.

55 I. Who were present when it occurred?

A. I can't say that.

56 I. What officer of the railroad company made the suggestion you mention?

A. I didn't say they made a suggestion. I say I understood the way in which they expected they would be able to be reimbursed.

57 I. What officer was that?

A. Either Mr. Tracy or Mr. Cook, or Mr. Tows—some one of the officers.

58 I. You cannot remember which one?

A. No; sometimes my conversation was with one and sometimes with another; but I can't say which particular one I had any particular conversation with.

59 I. Was that conversation with the officers of the Chicago, Rock Island & Pacific Railroad Company in presence of the other two members of the committee, or Mr. Tracy and Mr. Cook?

427 A. I can't say. I don't say that there was any conversation. I didn't testify that there was any conversation with the committee on the subject whatever.

60 I. How did they tell you they thought they could be reimbursed for that money?

A. In what way?

61 I. Yes, sir.

A. They supposed they would be able to settle with the non-assenting bondholders by paying them their dividends under the foreclosure sale. They supposed that would leave in their hands The Chicago, Rock Island and Pacific Railroad Company bonds, to which the non-assenting bondholders would have been entitled if they had assented. They also supposed that they would be able to retain the bonds which would have been given to the non-assenting stockholders if they had assented.

62 int. Did you assent to that?

A. No, sir.

63 int. What did you say?

A. I didn't say anything.

64. I. Nothing?

A. Nothing.

65 I. What did the other members of the committee say?

A. I don't know, sir.

66 I. You do not know that they said anything, do you?

A. I don't know, sir.

67 I. What arrangement was made for the disposition of the difference which should remain in the hands of the railroad company, after paying out the trust company's certificates and settling with the non-assenting bondholders?

A. None.

68 I. No arrangement at all?

A. No, sir.

69 I. Was there ever any arrangement made for the disposition of the difference between the committee?

A. No, sir.

70 I. Why was no arrangement made for the disposition of that difference?

A. No such arrangement was ever suggested by either party—either the committee or The Chicago, Rock Island and Pacific Railroad Company.

71 I. Was it understood by the committee when they entered into the arrangement of August first, 1866, that there would be a difference?

A. No.

72 I. Was it not understood that there would be any difference?

A. No, sir.

73 I. Was it at any subsequent time understood by the committee that there would be a difference remaining in the hands of the railroad company, after paying out the trust company's certificates, and settling with the non-assenting bondholders?

A. No such understanding.

74 I. Was it understood by the committee at the time they entered into the contract of the first of August, 1866, that the entire five million five hundred thousand would be consumed in paying the trust company's certificates, and settling with the non-assenting bondholders?

A. Will you repeat that question?

75 I. Question repeated.

428 A. There was no understanding as to whether it would or would not be consumed; the committee did not undertake to say that.

76 int. You wish to be understood, then, in saying that the committee

entered into that contract without any understanding as to whether or not there would be a difference, or what would be done with a difference, if one should remain.

A. I did state so.

77 I. Was the matter of their being a probable difference remaining discussed, resulting in the contract of August first, 1866?

A. I can't say.

78 I. Did you hear anything in regard to the probabilities of their being a difference in the hands of the railroad company, at or before the time that contract was entered into?

A. I don't recollect. I have heard something said; when it was—whether it was before or after that agreement—I don't undertake to say. I have no recollection.

79 I. Was there anything said in regard to their probably being a difference remaining in the hands of the committee or the railroad company before the purchase of the James bonds, which might be applied to indemnifying the railroad company for what they would loose by the purchase?

A. I can't say.

80 I. Did you ever hear anything of that kind said before the purchase of the James bonds?

A. I can't say whether before or after. No.

81 I. What amount was it understood, at the time you entered into the contract of August 1st, 1866, would be necessary to pay the trust company's certificates, & settle with the non-assenting bondholders?

A. There was no understanding, to my recollection, as to the specific amount due.

82 I. Now about what amount?

A. Nor even about what amount.

83 I. What provision was made for the non-assenting bondholders by the committee?

A. There was no provision made for either any bond or stock holders of any kind, except what was made by the agreeme't of first August, 1866.

84 I. Was there any understanding between the committee and the railroad company as to how much the railroad company should pay the non-assenting bondholders?

A. No.

85 I. Was the matter discussed at the time that contract was entered into, or about that time, as to the amount the non-assenting bondholders could be settled with for?

A. Was the matter discussed?

86 I. Yes, sir.

A. As a subject of negociation?

87 I. Discussed at all in any way?

A. We calculated and discussed among ourselves the amount of dividend the non-assenting bondholders would be entitled to out of the proceeds of the foreclosure sale.

88 I. What was said about that?

A. Nothing but to ascertain the amount of it.

89 I. What amount did you ascertain?

A. I don't recollect.

429 90 I. What per cent. did they have?

A. I don't recollect.

91 I. Upon what basis was it to be determined; the sale of five million five hundred thousand dollars, or the amount bid at the sale?

A. It was not a matter we determined at all, except as a matter of curiosity.

92 I. What was said about it as a matter of curiosity?

A. Simply to take out the amount the different classes of bondholders would be entitled to from the proceeds of the sale on the foreclosure sale.

93 int. Do you mean by that the amount of two million two hundred dollars bid at the sale?

A. Yes, sir.

94 I. Did you figure out the amount due the non-assenting bondholders on the basis of the amount bid at the sale, added to the amount of the trust company's certificates; did not they show there would be a difference remaining in the hands of the railroad company?

A. I have already stated that.

I. And the committee in their contract did not intend to make any provision for the difference?

A. They had no right to do it. They made no contracts, except what is embodied in the agreement of the first of August, 1866.

Adjourned to Monday, October 4th, at 10 a. m.

Examination continued, October 4th, 1869, at ten o'clock a. m.; same parties present.

Blakeley Wilson recalled.

By Mr. Withrow:

1 int. What was the amount of the non-assenting bonds on the ninth of August, 1866?

A. $185,756 00.

2 I. Was that on the principal debt alone, or for the principal and interest?

A. It is for the principal debt alone, with the exception of the interest that is allowed on the first mortgage in the stipulation.

3 I. What c'upons on the first mortgage, eastern division, were matured and unpaid on the 9th of July, 1866?

A. The c'upons of first of July, 1865, the first of January, 1866, and the first of July, 1866; that is, on the non-assenting bonds.

4 I. What c'upons were matured & unpaid on the non-assenting bonds, second mortgage, eastern division?

A. The same c'upons, 1st of July, 1865, first of January, 1866, and first of July, 1866.

5 I. On the Oskaloosa divisions, what bonds were matured and unpaid at the same date?

A. I think the c'upons of the eighth of May, 1865, the eighth of November, 1865, and the eighth of May, 1866.

6 I. For how long a time had the interest been running unpaid on the non-assenting land-grant scrip outstanding on the ninth of July, 1866?

A. On this statement it appears to have been from the eighth of May, 1864.

7 I. From the eighth of May, 1864, to the 9th of July, 1866?

A. Yes, sir.

8 I. What c'upons were matured & unpaid on the non-assenting land-grant income bonds 9th July, 1866?

430 A. From this it appears the first of July, 1865, the first of January, 1866, and the first of July, 1866.

9. I. What c'upons remained matured & unpaid on the non-assenting second mortgage land-grant bonds?

A. The same, precisely; first of July, 1865, first of January, 1866, and the first of July, 1866.

10 I. You may state at what rate per cent. the interest on these several classes or series of bonds were running.

A. They were all seven per cent. bonds.

11 I. You may state whether or not interest was accruing on the past-due c'upons.

A. Whether interest accrued on the c'upons themselves?

12 I. Yes, after they were due & unpaid?

A. I can't say; the c'upons did not provide for the payment of any interest in case of non-payment; it is not the custom.

13 I. State whether or not the amount of these several unmatured c'upons should be added to the $185,700 00 non-assented bonded debt, in order to ascertain the full amount of the non-assenting bonded debt at that time?

14 I. On the ninth of July, 1866?

A. Yes.

A. I suppose it should.

15 I. Do you know whether or not there were any outstanding c'upons maturing in 1863 and 1864, or any of these several classes of bonds remaining unpaid on the 9th of July, 1866?

A. It appears not, from this statement.

16 I. If there are any such should they be added to the bonds and c'upons you have already mentioned in order to ascertain the amount of the non-assenting bonded debt at that date?

A. Do you ask me to testify to what I think, or what I know?

17 I. I ask you to testify in regard to whether or not non-assenting unpaid c'upons maturing in 1863 & 1864 should be added to the amount you have named in ascertaining the amount of the non-assenting bonded debt?

A. That would depend upon the circumstances under which they remained out.

18 I. If they are valid outstanding unpaid c'upons?

A. If they were a valid claim against the company I should say yes.

19 I. Then you do not undertake to testify exactly as to the amount of of non-assenting bonded debt at that date, do you?

A. No.

20 I. Do you wish to be understood in saying that $185,709 is the principal of the non-assenting bonded debt at that time, as near as you can ascertain it?

21 A. I do with the exception I made previously about that item of interest on the first mortgage, eastern division.

22 I. You say in your examination-in-chief that the assented bonds and stock amounted to $5,240,493 66; what part of that was for assented bonds?

A. I have testified it was $4,790,733 66. I now testify the same with the exception that I discover an error in my computation of $500, which perhaps I might correct now.

23 I. Please state what the correct amount is?

A. It is $4,791,233 66.

24 I. What amount was for assenting stock?

A. $449,760 00. The aggregate of these two sums is $5,240,493 66.

431 25 I. Leaving in the hands of the railroad company $259,506 34?

A. We might carry that correction all through; it would be $5,240,993 66, leaving $259,006 34.

26 int. Now was it understood between the Stanton committee and The Rock Island Company that the difference should be applied in paying the expenses of foreclosure, the expenses of executing the several trusts, and in settling with the non-assenting bond and stock holders?

A. Yes, sir.

27 I. What was this $551,000 intended to cover?

A. What $551,000?

28 I. Which was set apart not to be paid to the bondholders.

A. That $552,000 was appropriated to the stockholders.

29 I. In paying sixteen per cent.?

A. Yes, sir.

30 I. Then any sum in addition to the $449,760 of the $552,000 which The Rock Island Company has paid to the receiver should be deducted from the $259,006 34, should it not?

A. No, sir; let us see.

31 I. After setting apart $4,791,233 66 for assented bonds, and $449,760 for assented stock, you leave of the $5,500,000 in the hands of the railroad company $259,006 34?

A. Yes, sir.

32 I. Now if the railroad company has paid not only the $449,761, but has paid an additional sum to the receiver on account of the funds set apart for the stockholders, should not the difference between the $449,760 and the amount actually paid to the receiver be deducted from the $259,006 34 to show the actual amount in the hands of the company now?

A. It should.

33 I. Then this amount of $259,006 34 should be reduced by the amount of the difference between $449,760 and the amount actually paid by the R. R. company to the receiver in this case, should it not?

A. It should not.

34 I. The amount $259,006 34 should be reduced by the amount of the difference between $449,760 and the amount of the principal of the $552,000 paid by the railroad company to the receiver, should it not?

A. Yes; I wish to explain that I have been testifying all the time with reference to the ballance of the $5,500,000 remaining in the hands of The Chicago, Rock Island and Pacific Railroad Company.

35 I. You have been testifying as to the condition of the account before any payment was made by the receiver?

A. The condition of the account relating to the $5,500,000. When I stated that there was a balance of $259,006 34 remaining in their hands I was not testifying as to the whole balance remaining in their hands belonging to the com. or those whom the committee represented, but only as to the balance of $5,500,000.

36 I. Was there any contract in relation to the surrender of the 800 bonds held by The Chicago and Rock Island Company, or in relation to the payment of the $500,000, other than that which appears in the records, copies of which are set out in the stipulation of the parties?

A. Where are those papers?

(Papers shown witness, being proceedings of the executive committee of the two companies set out in the stipulation of the parties.)

A. I can only swear to the contracts which were made after I was a director of the company.

432 37 int. Was there any other contract than that contract set out in these papers?

A. After I became a director?

38 I. Any contract to your knowledge.

A. No; not to my knowledge.

39 int. Then all the contracts relating to that loan of which you have any knowledge are set out in these papers, are they?

A. Yes.

Cross-examination by Mr. Grant:

1 int. Was it not agreed at the time the resolution was passed to release those bonds that the bonds then in possession of The Rock Island Company should assent to the P. M. Meyers contract?

A. It was; that was one of the conditions on which we released.

2 I. Was that put in writing?

A. It does not appear to be; it is not in the copy of the proceedings of the executive committee of the Mississippi and Missouri Company.

BLAKELY WILSON.

Adjourned to Thursday, October fifth, 1869, at 10 o'clock a. m.

OCTOBER FIFTH, 1869—*ten o'clock a. m.*

Examination continued; same parties present.

John Elliott recalled:

By Mr. Grant:

1 int. When were you elected a director of the Mississippi and Missouri Railroad Company?

A. In the early part of 1865.

2 int. What was the financial situation of the road when you became a member of the board?

A. As to its indebtedness?

3 I. I want to know if it was embarrassed or not.

A. Well, the financial condition of the road was anything but flattering; they owed a large debt, and had been in default, and its stock had fallen very much in price, and the whole concern seemed to be in a very embarrassed condition.

4 I. Did the board have a statement of its indebtedness prepared by any of its officers?

A. At the first meeting of the new board of 1865, the secretary of the company was requested to furnish a statement of the indebtedness of the company, and any other matters of interest pertaining to the road, that would afford information and an intelligible understanding of the affairs of the company to the new directors.

5 int. Have you got that statement, sir?

A. That is the statement, sir.

(Referring to a statement copied in Mr. Wilson's deposition.)

6 int. What reason have you to know that the statement of the indebtedness, particularly the bond indebtedness, is correct?

A. I have the assurance of the secretary at the time that he gave it that it was.

7 I. What increase in indebtedness occurred after that statement was made to you?

A. None at all.

8 I. I notice in that statement, January interest unpaid, $14,000, is erased. Why is that?

433 A. That was put down there as a liability of the company, and the amount was paid in satisfaction of c'upons to that extent on the first mortgage bonds that had matured.

9 int. It was erased then because it was paid?

A. Yes, sir; because it was paid.

10 int. Under the head of "other liabilities" are various amounts due to Chicago & Rock Island Railroad Company, $53,000; paid for construction west of Grinnell, $15,000; due on unpaid pay-rolls and vouchers, (estimated,) $30,000. They are erased; where are they?

A. Perhaps I had better give an explanation of that.

11 I. Certainly.

A. The Chicago and Rock Island Railroad Company had a contract with The Mississippi and Missouri Company for running the Mississippi and Missouri Road, the receipts arising from the operations of the Mississippi and Missouri Road by that contract passing into the hands of The Chicago and Rock Island Company. As the indebtedness of the Mississippi and Missouri road was paid, we were advised of it from time to time by the secretary, and those amounts crossed off were paid from the receipts of the Mississippi and Missouri Road under that contract

12 int. What became of this amount, due on sundry judgments & claims, $20,000?

A. That was subsequently paid in the same way, out of the same funds.

13 I. In this account it states that the net earnings for the first five months in 1865 were $93,713 17. What became of those and subsequent earnings during that year?

A. They were retained by The Chicago and Rock Island Company, and applied, I suppose, to the payment of these claims, about which I have been speaking as being paid.

14 I. What account was ever rendered to the company by The Chicago & Rock Island of earnings for 1865, if any?

A. No account at all.

15 I. Was there a loan of $500,000 by the Chicago and Rock Island company to the Mississippi and Missouri road at the time you came into office?

A. Yes, sir.

16 I. How does that appear in this statement of the indebtedness of the company?

A. It don't appear in that at all. The Chicago and Rock Island Company received as collateral for that loan eight hundred one-thousand-dollar first-mortgage land-grant bonds of the company, with the option of taking them at sixty-two and a half cents on the dollar in satisfaction of the debt in case the company didn't pay.

17 I. Are those eight hundred bonds represented on that statement?

A. The eight hundred bonds, I presume, are a portion of the first mortgage land-grant bonds.

18 I. They must have been, if no bonds were issued after you came into office.

A. No bonds were issued after I came into office.

19 I. Was this five-hundred-thousand-dollar debt paid; and how?

A. It was paid by a surrender of the eight hundred one-thousand-dollar bonds to The Chicago and Rock Island Company at the rate of sixty-two and a half cents on the dollar.

20 I. Was anything said at the time of the surrender about retaining the interest on the loan as a subsisting debt?

A. No, sir.

434 21 I. Was that after the November, 1864, c'upons fell due?

A. Yes.

22 I. What was said at the time of the surrender about the company's retaining those c'upons for the interest?

A. Nothing was said.

23 I. What was said at the time of the satisfaction of this debt, by release the Mississippi and Missouri Road of the right to redeem these eight hundred bonds, about their being put into the Peter Meyers agreement?

A. There was a resolution passed by The Mississippi and Missouri Company requesting The Chicago and Rock Island Railroad to put in the eight hundred one-thousand-dollar bonds, as it was understood when they assented to take those bonds at sixty-two and a half cents that they should be put in, and there being some delay in the matter, the executive committee of the Mississippi and Missouri Company requested that the Chicago and Rock Island Company should at once deposit the bonds, and they were so deposited under the Peter Meyers agreement.

24 int. After the contract of November first, 1865, for the sale of the road was signed by the two companies, was there any delay in the proceedings of the foreclosure, and why?

A. I can hardly remember what occurred at that time. I don't think there was any delay in the other class of bonds in commencing proceedings of foreclosure, but there was a delay in the foreclosure of what was known as the second mortgage land grant, in consequence of a large amount of them being held by a party who had not put them into the Peter M. Meyers agreement.

25 I. Was that amount a majority of the bonds?

A. That I am not prepared to say. It was a very large amount, and might be a majority of the bonds. I think it was.

26 I. The amount of that issue was $691,000?

A. Yes, sir.

27 I. How were they brought under the Peter Meyers agreement?

A. In the same way that the other class of bonds were—by depositing them.

28 I. Who deposited them?

A. The Chicago and Rock Island Company.

29 I. They purchased them, I suppose?

A. I presume they purchased them.

30 I. Do you not know the fact?

A. I heard so. It was so stated to me by Ebenezer Cook that they had so purchased what are called the James bonds.

31 I. What is the total amount of the Union Trust Company's certificates for bonds and stock?

A. The trust company's certificates for the bonds were $4,791,233 66, and for the stock, $449,760.

32 I. This statement is the scaled price of stock and the bonds.

A. Yes, sir; the scaled price.

33 I. How many outstanding bonds of each class would there be besides those in the trust company's certificates?

A. According to the statement, we have here—

First mortgage, first division, there were outstanding	.....	$17,000
Of the income bonds, first division	.....	$18,000
Second mortgage, first division	.....	$1,000
First mortgage, Oskaloosa division	.....	$21,000
" " land-grant bonds	.....	$45,000
435 Income bonds	.....	60 000
Second mortgage land-grant bonds	.....	23 500

That is all.

34 I. Do you know anything about retaining any part of the interest on the $5,500,000 bonds when the trust company's certificates were surrendered by The Chicago and Rock Island Company; what amount it was?

A. There was an agreement. I suppose the question has reference to the interest specified in the agreement of the first of August.

35 I. I want to know what part has been paid and what part remains unpaid.

A. There was an agreement on the first of August, which speaks for itself.

36 I. What agreement was that?

A. The agreement of the first of August between the committee and The Chicago and Rock Island Company as to the matter of interest, as follows: "That the party of the first part, as the agent of the parties of the second part, agrees to distribute the new bonds, with interest from the first day of December, eighteen hundred and sixty-five to the date of the bonds, and fulfil all the other obligations of the said agreement of the said committee with P. M. Meyers and others contained. It being understood that the distribution of the bonds shall be made within the time, and subject to the penalty of the agreement of July third, between the same parties, and that the interest shall be distributed at the same time, and subject to the penalty of the agreement of July third, between the same parties, and that the interest shall be distributed at the same time, or whenever, in the opinion of John F. Tracy, Joseph E. Sheffield, and William Walter Phelps, or any two of them, such distribution can be made without risk to the right of the party of the first part, hereinafter conceded, to use the same, or that part of the same, to defend themselves against any suits or liabilities incurred by them under this agreement, which shall be necessary and proper."

37 I. That is the clause you refer to.

A. Yes sir. Now, sir, holders of the trust company certificates, on presenting them to The Chicago, Rock Island and Pacific Railroad Company, as our agents, were informed that the full settlement of the interest would be made with such of them as choose to take it, on their allowing three months' interest to be retained.

38 I. How much was retained?

A. The three months' interest, if surrendered by the holder of the trust company certificates, would amount to $83,846 59.

39 I. Where is the amount of five million five hundred thousand dollars for the non-assented bonds and this interest; who has it?

A. It is with The Chicago and Rock Island Company.

40 I. Where are the books you deposited with the Union Trust Company, containing the Peter Meyers agreement and the copies of the certificates of the trust company?

A. They are with The Chicago and Rock Island Company.

41 I. How came that?

A. They borrowed them from the president of the Union Trust Company.

42 I. Has The Chicago and Rock Island Company been requested to return them to that place?

A. Yes, sir.

43 I. Who made the request or demand?

436 A. I, myself, in company with Mr. Wilson, made the demand.

44 I. What did The Chicago, Rock Island and Pacific Railroad Company answer to the demand?

A. The demand was made of Mr. Tows, and his reply was, we could not have them.

45 I. Who is Mr. Tows?

A. Mr. Tows is or was secretary of the Chicago, Rock Island and Pacific Railroad Company.

46 I. Was he at that time?

A. He was either secretary or assistant secretary at that time.

47 I. Has your agency to the Chicago, Rock Island and Pacific Railroad Company been recalled?

A. Yes, sir.

48 I. When was this demand made; after or before recalling that?

A. After.

49 I. Do you know anything of the claims of Mr. Foster put forth in this suit? Did you ever hear of it while it was in progress?

A. Yes, sir.

50 I. Tell us what you know about it.

A. At the time of the Foster suit, we as a committee were desirous of having a continuance of the case that was then pending in the circuit court of the United States for the district of Iowa, and we hardly knew exactly how to accomplish the object. Mr. Charles Tracy, who acted as the attorney for The Chicago and Rock Island Road, and also for the committee, wanted to know if I could direct him to any non-assented bonds of the company, as he thought it important that as many of them should be obtained as possible. I told him that I knew of ten thousand that might be had, and he suggested that I should go and see the price they could sell them at. He remarked at the time that ten thousand of the bonds had already been obtained of the first mortgage land grants, but he thought the amount too small, and he would like to have a larger amount put in. I told him the bonds I knew of were the second mortgage land-grant bonds, and he said he thought it would be advisable to get them, even though they were second mortgage land-grant bonds. The bonds which had been purchased were bonds belonging to Mr. McComb. I asked him what had been paid for them, if he knew. He said he believed they were got at the scaled price. These bonds are the bonds I understand are sued on by Foster.

51 I. At the time you had this conversation with Mr. Tracy, you refer to a suit that had then been instituted by Howard and others against yourself and others, in the United States circuit court for the district of Iowa?

A. That is what I refer to.

52 I. What was the object of this Foster suit; to prevent the disposition of the fund in that Howard suit?

A. Yes, sir.

53 I. Who did Mr. Tracy tell you—in whose name was the McComb bonds purchased?

A. He said the company were responsible for their purchase, but it would not do to buy them in their name.

54 I. Did he tell you who was the purchaser?

A. No.

55 I. What company was he speaking of?

A. The Chicago, Rock Island & Pacific Railroad Company.

56 I. Was this conversation with Mr. Tracy after the decision of
437 the case of the circuit court of the United States for the district of Iowa, adverse to the committee, and an appeal had been taken to the United States Supreme Court?

A. It was after.

57 I. Was any appeal bond filed in that case, so as to stay the execution?

A. The committee did not file any appeal bond to supersede the judgment.

58 I. Now, what was the object of the Foster suit?

A. The object of the Foster suit is better stated in a letter from Cook and Drury than any other way that I could state it, as follows:

"DAVENPORT, IOWA, *November 1st*, 1868.

"Messrs. ELLIOTT & WILSON.

"GENTS: Your favor of 26th instant received. We have just returned from the federal court at Des Moines, where we had the question pending about the distribution of the 16 % fund, the same having just been paid over to the receiver, after a fight all summer, at rule days of the court, to keep it out of the hands of the receiver, so that he could not distribute in accordance with the terms of the decree until we could get a decision of the Supreme Court of the United States, and in hopes that it would bring about a settlement. In looking up ways and means to hold the fund, we obtained a transcript of Foster's suit in New York, showing that we were there enjoined, and hoped to get over it in that way. Meantime, Mr. Foster sends his bonds here and intervenes, and the court ruled that under the circumstances the funds should be held until the next (May) term of the court, & intimated that if the case was speedily prosecuted in the Supreme Court they might continue the order until determined at Washington. Our motion, backed by the New York Foster record and affidavits, was continued until next term. We convinced the court that if the fund was distributed now among Grant's clients, and the case should be reversed, we never should get one cent of it back. The Foster suit saved us.

"We are preparing the record as rapidly as possible, and shall get it to Washington and printed early. Meantime, the writer expects to see you before the meeting of that court.

"Truly yours, &c.,

"COOK AND DRURY."

59 I. You are a broker?

A. No, sir; I am not.

60 I. A banker?

A. Yes, sir.

61 I. Do you know what was the market value of these various classes of the Mississippi and Missouri bonds from and after the contract for the sale of the road in November, 1865?

A. To give a definite answer to that question, I would have to refer to the stock-list of that period.

By Mr. Withrow:

62 int. Were there sales in the market?

A. There were some sales of the land-grant bonds. I remember very distinctly they were selling somewhere from thirty-five to forty cents on the dollar.

63 I. After the sale and foreclosure?

A. Oh, no; not after the sale & foreclosure.

438 64 I. That was before the Meyers agreement transpired?

A. The best way is to refer to the stock-list, which I will do, if desired. I think I bought one of them myself.

By Mr. Grant:

65 I. It was not in the open market?

A. I bought it from a man who came into the office trying to sell it. I gave him more than he could get from anybody else for it. (Refers to book.) On the sixth of June, 1866, I bought an Mississippi and Missouri land-grant bond at fifty-three and a half cents. That was before the sale, was it not?

Mr. WITHROW. Yes, sir.

Cross-examined by Mr. Withrow:

1 I. Who is Charles Tracy?

A. He is a very estimable and respectable lawyer of the city of New York.

2 I. State whether or not he was the attorney of the Stanton committee, at the time of the transaction you speak of?

A. He gave advice and counsel to the Stanton committee at the time.

3 I. State whether or not he was retained by the Stanton committee, as its attorney at the time.

A. He was retained by The Chicago and Rock Island Railroad Company, under the agreement to pay for all the legal expenses connected with the suit.

4 I. State whether or not the Stanton committee consulted with Charles Tracy, as its attorney, at that time.

A. Undoubtedly.

5 I. State whether or not the conversations you have detailed were between Charles Tracy, as attorney, and the Stanton committee, as clients.

A. I should say they were.

6 I. For whom was James Grant acting as attorney, at that time, in this case?

A. Not for us.

7 I. Was he acting for any party?

A. I presume he was acting—what do you call your case?

Mr. GRANT. Howard case.

Witness continues: Howard.

8 I. State whether or not Judge Grant's clients' interests were adverse to yours in the case of Howard vs. City of Davenport and others?

A. At that time I regarded them so.

9 I. Who is the attorney in the case of Howard against The City of Davenport, now?

A. Grant and Smith.

10 I. Is the Grant of the firm of Grant and Smith the same Grant who is acting for the defendants now?

A. The identical man.

11 I. When was it that Grant and Smith were retained by the Stanton committee in the case of Howard vs. The City of Davenport and others?

A. (Refers to book.) In the month of January, 1869.

12 I. Did you at that time disclose to Judge Grant the pranks that you were playing on him, under the advice of Charles Tracy, when he was acting as attorney for the plaintiffs?

439 A. I don't think at that time I did.

13 I. Was Charles Tracy, at the time the conversation occurred, acting as the attorney of Frederick A. Foster?

A. That I don't know.

14 I. You don't know whether he was or not?

A. No, sir.

15 I. You say you desired, at that time, to prevent the distribution of this fund?

A. That was our object, or the object of our attorneys, and our object to.

16 I. When was it that you concluded that you desired to have the fund distributed?

A. Well, we had a very strong desire, after the case had been settled by the Supreme Court, to have it distributed, & before.

17 I. And before?

A. And before.

18 I. State why the committee desired the distribution of the fund before the decision of the Supreme Court.

A. To have trust closed up and the business settled.

19 I. Did you employ counsel to argue the case in the Supreme Court of the United States?

A. Yes.

20 I. Who did you employ?

A. We employed, as the attorney of the stockholders, Judge Emmott, of this city.

21 I. Why did your counsel argue the case and seek a reversal, if you desired a distribution of the fund before the decision?

A. We could not obtain a distribution of the fund until the case went to the Supreme Court of the United States, and had to submit to it.

22 I. Were you advised by counsel that you could not dismiss or abandon your appeal to the Supreme Court of the United States at any time?

A. I don't think we were.

23 I. Did you understand at the time that the parties taking an appeal could not dismiss or abandon their appeal at any time?

A. We were not so advised by our counsel.

24 I. Did you so understand?

A. We thought best to let it go to the Supreme Court of the United States, because we hoped the decision would be reversed by the Supreme Court of the United States.

25 I. Did you ever answer the letter of Cook and Drury, which you have produced in your examination in-chief?

A. Yes, sir.

26 I. Let me see your answer.

A. (Examines letter-book.) I may have lost the copy of it. I can't give you a copy of the answer to that letter. I don t seeme to have it.

(Copy of answer found & attached at end of Mr. Elliott's deposition.)

27 I. Did Cook and Drury respond to the answer that you sent them?

A. (Examines paper.) It is possible Mr. Wilson may have a copy of that letter. I have a letter from them of November 13th. (Produces same.) "We are in receipt of your favor of the 8th."

28 I. (Interrupts.) You have answered on the 7th here?

A. There may be a mistake in the date. "Nov. 7th" is in my handwriting. This is an answer November 13th, 1868. Let me look at it, if you please.

440 29 I. Will you furnish a copy of the letter of John P. Cook for Cook and Drury, of November 13th, 1868, to the party taking this deposition?

A. Yes, sir; the following is a copy:

"DAVENPORT, IOWA, *Nov.* 13, 1868.

"Messrs. ELLIOTT & WILSON.

"GENTLEMEN: We are in receipt of your favor of the 8th inst., and in reply we have to say, that on the basis of the decree, a copy of which you have, there is no error in the amount so far as your committee are concerned.

"You are aware there was a surplus which was supposed at the time would go to reduce the $400,000 which Mr. Tracy paid for the bonds upon which Durant and others commenced their foreclosure The theory of the decree in this case makes the railroad company account of $5,500,000 as the purchase-money of the old Mississippi & Missouri Road; hence the railroad company were only allowed the actual amount they paid out; and the decree in this case makes it account for the balance to Judge Grant's creditors of the Mississippi and Missouri Railroad, and it was this surplus Mr. Taylor undertook to subrogate to your committee, about which we wrote you last May. The effect of the decree, as it now stands, is to subrogate the shareholders of the Mississippi and Missouri to grant the amount of the fund as agreed upon and stipulated in the contract between you and the railroad company, and in accordance with the trust created, of which you are the trustees.

"We enclose to you the interlocutory decree suspending the distribution of the fund under the prayer of the petition of Frederick A. Foster.

"There is no further or other decree in the case except what you have copies of. We have just completed the record in this case on our appeal to the Supreme Court United States. We shall express the record (which is very voluminous) to Washington next week. You will see by the copy of the decree herein enclosed that it contemplates the submission of the case on the printed argument under the rule of sixty days, which Judge Emmott will understand and explain to you. Now, one of us will go to Washington with our printed brief and argument, and see that the case is properly submitted. In the meantime, we desire that Judge Emmott shall examine the record, and prepare an argument setting forth his views of this case. The record will be printed by the clerk of the court directly after filing, and we will try and furnish the judge with a printed copy, together with our brief and argument, in time for him to add whatever he may desire in this case.

"Truly yours, &c.,

"JNO. P. COOK,
"For COOK & DRURY."

30 I. Did you answer that letter?

A. There don't seem to be any reply to that letter.

31 I. Did you have any further correspondence with Cook and Drury in regard to the appeal?

A. I don't think we had, because Judge Drury was coming on here. We expected to see Judge Drury.

441 32 I. I see that Cook and Drury, in their letter of the 13th November, refer to an arrangement that was made as to the disposition of a surplus. Had you ever heard of that before?

A. (Reads letter.) There was no arrangement in relation to the disposition of a surplus.

33 I. Had anything ever been said to you before to your knowledge in regard to the disposition of a surplus?

A. There may have been something said about it, but I can't say definitely.

34 I. Have you any recollection whatever upon the subject?

A. There were conversations between Mr. Cook and myself in relation to the James bonds and the advisability of The Chicago, Rock Island and Pacific Company getting control of them, and it was suggested that a surplus might probably arise which The Chicago and Rock Island Company might avail itself of to refund any amount they might pay for those bonds, but there was no agreement that any such money should be paid in that way.

35 I. Was this conversation before the James bonds were purchased?

A. After, I think, sir.

36 I. You say it was after?

A. After.

37 I. Was it while the foreclosure suit was pending?

A. What time did the foreclosure suit commence?

38 I. It commenced in February, 1866, by Durant & others.

A. Well, this conversation was after they made the arrangement with James to buy the bonds.

39 I. Had the matter ever been mentioned before that time in your presence, either by an officer of the Chicago and Rock Island Company, or by any member of the committee, or any person acting for them?

A. I think not.

40 I. Had the committee, or any member of the committee, ever requested The Chicago & Rock Island Company to buy the James bonds?

A. They may have done so, but I am not aware of it. I never did so; don't remember that the committee ever done so.

41 I. Did you ever hear any conversation of any member of the committee with any officer of the railroad company in regard to the matter before the James bonds were bought up?

A. No; not that I recollect of.

42 I. Who was present at this conversation between Mr. Cook and yourself?

A. No one, that I am aware of.

43 I. Who made the suggestion?

A. I think the suggestion was made on the part of Mr. Cook.

44 I. What did you say in response?

A. I told him that that was a matter I could not commit myself to.

45 I. Was that all that was said?

A. There may have been more said. The answer was to that effect. The conversation resulted in that.

46 I. Is that as full as you can remember that conversation?

A. Yes; that is as full as I can remember it. I remember the conversation very well. Ebenezer Cook suggested that it might be advisable for The Chicago and Rock Island Company to buy the bonds, and I fully concurred in it that it would be advisable *to* them to buy the bonds, and that it was for their interest to do it and to have the foreclosure suit and the sale accomplished as speedily as possi-
442 ble; that they would make money by it, and in the saving of time that it would occasion.

47 I. Was anything said about this when the contract of August first, 1866, was executed?

A. About what?

48 I. About the application of any surplus that might remain after

paying the non-assenting bondholders, the cost of the foreclosure suit, and the suit against the Stanton committee, and other necessary and proper expenses?

A. No, sir; there could be nothing said about it at that time that would conflict with the agreement.

49 I. Was it understood, on your part, & on the part of the other members of the committee, that after paying the assenting bond and stock holders, and paying the expenses of the several suits and other expenses, that there would be a surplus of the $5,500,000 remaining.

A. Yes, sir.

50 I. And was any arrangement or provision made for the disposition of that surplus?

A. None other than that provided by the Meyers agreement.

51 I. Was anything said in regard to that surplus at that time?

A. Nothing.

52 I. The fact that there would be a surplus was not mentioned by any of the parties to the agreement, was it?

A. It may have been mentioned, and probably was.

53 I. Have you any recollection of its being mentioned?

A. I think it was probably mentioned.

54 I. Do you have any recollection as a mere matter of opinion that it was mentioned?

A. I have no doubt of it.

55 I. What consideration, or what was the inducement to The Chicago, Rock Island and Pacific Railroad Company to enter into the contract of August 1st, 1866?

A. I presume the object they had in having the contract entered into was to have the settlement of the matter as much in their own hands as possible.

56 I. What benefit was to be derived from having a settlement in their own hands?

A. They might see some benefit which I could not; I could not see any decided benefit to arise to them.

57 I. What benefit was understood by the committee at the time to result to The Chicago, Rock Island and Pacific Railroad from having the settlement in their own hands?

A. The benefit to the committee was very decided, because it saved the trouble of the distribution of the bonds. The Chicago and Rock Island Company undertook the settlement with the parties under the P. M. Meyers agreement.

58 I. Was that the only benefit to the committee?

A. That was about the only benefit to the committee.

59 I. What benefit was it understood on the part of the committee The Chicago, Rock Island and Pacific Railroad Company desired to secure by undertaking the execution of that trust?

A. Well, I can see very readily what they desired to secure.

60 I. The question is what was understood by the committee at the time the contract was entered into?

A. We had no understanding about it; but we could see very readily what benefits The Chicago & Rock Island Company expected to secure.

443 61 I. When was it this contract was made between The Chicago, Rock Island & Pacific Railroad Company and the committee, in regard to reserving the three months' interest?

A. The arrangement, or whatever you may call it—there was no written contract—was in October, 1866, or about that time.

62 I. Where was that arrangement made?

A. In New York.

63 I. Who was present?

A. The arrangement was made by the committee with the Chicago and Rock Island Railroad Company, as agents of the committee, that they might pay the holders of those bonds, six instead of nine months' interest to all who were willing to accept it in full settlement of the interest upon the trust company's certificates.

64 I. Was the three and one-half per cent. to be in full payment of the nine months' interest?

A. To all who choose to accept it.

65 I. What arrangement was made as to the disposition that should be made of the difference between six and nine months' interest?

A. That was to be applied in accordance with the contract of the first of August, to pay the expenses and claims that might arise against the committee in closing up of the trust.

66 I. Was there anything said in regard to the application of any portion of this to reimbursing the railroad company for what was lost in the purchase of the James bonds?

A. Nothing.

67 I. Who did you say were present when this arrangement was made?

A. My impresion is Mr. Stanton first called the attention of the railroad company to the settlement with the bondholders in this way by a reduction of interest; that he advised the other members of the committee, that is, Mr. Wilson, and myself; and that at a subsequent interview Mr. Wilson and myself assented to the arrangement.

68 I. Were you present at the time of the interviews between the committee & the president of *and* the railroad company?

A. Not at all of them?

69 I. Were you present at any of them?

A. Several.

70 I. State what interviews you were present at, who were present when the interviews occurred, & what was said?

A. I can't do it.

71 I. Do you remember any one interview at which you were present?

A. Certainly.

72 I. Where was it?

A. I remember being present at interviews that we had with Mr. Tracy, the president of the road, at the office of The Chicago and Rock Island Company.

73 I. Who was present?

A. I don't know that any one was present save Mr. Tracy and the committee.

74 I. All the members of the committee there?

A. Yes.

75 I. Was this matter discussed?

A. Not at that time.

76 I. Nothing was said about this interest matter at that time?

A. Nothing.

77 I. Were you present at any interview between the committee, or any member of the committee, and The Chicago, Rock Island and
444 Pacific Railroad Company, or any officer of that company, in which the matter of the reservation of this three months' interest was discussed?

A. I was present with Mr. Wilson when this matter was discussed with Mr. Tracy.

78 I. When and where was that?

A. In the month of October, at the office of the Chicago, Rock Island & Pacific Railroad Company.

79 I. What was said?

A. We suggested that it was the most satisfactory way, both for them as a company, for us as a committee, and for the bondholders, to settle with the holders of Union Trust Company's certificates by paying them six month's interest; it would save trouble, and the three months' interest would go towards the payment of the expenses, which Mr. Tracy alleged they would incur in closing up the trust, over and above the $32,400, I believe it is, that is reserved on the trust certificates.

80 I. Was that all that was said?

A. That is about all.

81 I. Did they agree to do it?

A. Yes, sir.

82 I. And you agree to let them do it?

A. Yes, sir.

83 I. There was a contract between the parties?

A. No, there was no written contract; we assented to it, and they assented, and the holders of the certificates assented to it, and the thing was pretty much closed up, as I understand.

84 I. How do you know that the holders of the certificates assented to it?

A. I know I did for one.

85 I. Do you know of any others?

A. Yes, lots of them.

86 I. Was it understood by the parties that this arrangement was invalid if the holders of the certificates did not assent each for himself?

A. It required each to assent.

87 I. What expenses were to be provided for out of this reserved interest?

A. The legal expenses in closing the trust, the sale of the road, and the expenses, which it was alleged by Mr. Tracy would amount to a good deal more than the $32,000 expenses?

88 I. What expenses did he say would amount to more than this $32,000 expenses?

A. Why the legal expenses in closing up the trust.

89 I. This alone?

A. This alone.

90 I. Anything said at that time in regard to the James bonds?

A. I think not.

91 I. Not very certain about that, are you?

A. I would be pretty positive about that.

92 I. Do you wish to be understood as stating that there was a contract or agreement between the committee & the railroad company relating to the reservation of this interest?

A. I wish to be understood that there was an understanding of this kind between the committee and the railroad company.

93 I. Have you heard the evidence of Mr. Wilson and Mr. Stanton upon this subject in this case?

A. I have not.

94 I. You say that the non-assenting bonded debt of the railroad
445 company amounted to one hundred and eighty-five thousand & five hundred dollars?

A. Have you a footing of it?

95 I. Yes; it is my footing.

A. Is that the principal debt alone or does it include interest?

96 I. Principal debt.

A. That don't include any unpaid c'upons?

97 I. That is the principal debt. Then the unpaid c'upons—non-assenting on the Meyers agreement on the ninth of July, 1866—are to be added to that estimate, are they not?

A. Whatever unpaid c'upons belong to the bonds, I suppose, should he added to that.

98 I. Should the interest accruing to unpaid past-due c'upons also be added.

A. If I was asked to settle Mr. Withrow's claim, I think I would add the interest of unpaid c'upons.

99 I. Do you undertake to say how much the non-assenting bonded debt, principal, matured unpaid c'upons, and interest on the unpaid c'upons really amounted to on the ninth of July, 1866?

A. I have not said what it amounted to.

100 I. You do not know, do you?

A. I have not entered into a calculation.

101 I. Do you know how many c'upons had been severed from the bonds & were held by parties who did not surrender them?

A. No, sir.

102 I. On the first mortgage land-grant bonds, what was treated as a par bond?

A. The par bonds were the bonds with the first of May c'upon attached.

103 I. And all subsequent c'upons?

A. And all subsequent c'upons.

104 I. Well, what was allowed on bonds that had the November and May, 1864, c'upons, or any other c'upons maturing prior to May, 1865?

A. Nothing more than on bonds having the first of May, 1865, c'upons.

105 I. What was allowed upon a bond from which the May, 1865, c'upon was severed?

A. The bond was scaled at thirty-five dollars less.

106 I. Why was that done?

A. Because it was considered as lacking the c'upon.

107 I. Under what agreement did the committee adopt this rule?

A. Under the Peter Meyers agreement.

108 I. Was there any other agreement or contract under which that was done?

A. No, sir.

109 I. Then upon a bond on which the May c'upon was not attached you subtracted and gave a certificate for it?

A. The trust company did.

110 I. When a bond was presented having the November c'upon, 1864?

A. We took care not to add it.

111 I. Under the Peter Meyers agreement, then, the committee invariably subtracted but never added?

A. Never added—rather arbitrary.

446 112 I. What was done with c'upons severed from the bonds when presented to the committee?

A. If a party came in with c'upons prior to May, 1865, he could not get any certficates from the trust company for them. I understand there was a mistake made by the company in giving a certificate for two c'upons, & when they spoke to Mr. Stanton, the chairman of the committee, about it, he told them it was wrong, and they refrained issuing certificates for any others.

113 I. Then parties holding c'upons prior to May, 1865, were not permitted to assent to the P. M. Meyers agreement?

A. For the c'upons, prior to 1865, there was no provision whatever.

114 I. Practically the committee did not permit the holders of such c'upons to become parties to the P. M. Meyers agreement?

A. Not unless the c'upons were attached to the bonds.

115 I. It did not make any difference then, did it?

A. Certainly, because the agreement was that they could get seventy per cent. upon the face of the bonds.

116 I. The committee did not permit parties holding severed c'upons, maturing in 1864, to become parties to the Meyers agreement?

A. Yes, sir; but they were not allowed anything for said c'upons?

117 I. So that a party holding that class of c'upons, thus maturing in 1864, was a non-assenting creditor, whether he wished to be or not?

A. If he put in his bonds, he was not.

118 I. Suppose he had no bonds, & nothing but c'upons maturing in 1864?

A. I don't see how a case of that kind could arise.

119 I. Does it not occur every day, severed c'upons floating seperate from the bonds?

A. Sometimes they are, but not a thing that occurs every day at all. We can cut off the c'upons and sell them as a matter of course; but here was a trust requiring holders to deposit bonds, and all we regarded as important in connection with our trust was, that they should have the c'upons attached to the bond for May, 1865.

120 I. Did you permit any holder of the bonds to become a party to the P. M. Meyers agreement who did not have the original bond?

A. Well, I have already stated, in the case of two c'upons, we did.

121 I. I am speaking now of the rule?

A. The rule was that those parties who had c'upons maturing prior to May, 1865, independent of the bonds, were not permitted to deposit them.

122 I. Were parties who held severed c'upons maturing in May, 1865, permitted to deposit them?

A. No, sir; unless with the bonds.

123 I. When a May c'upon was severed from the bond you deducted it from the amount of the bond?

A. Yes, sir.

124 I. Upon what princip*al* did you do that?

A. I don't know that a case of the kind arose; we wanted to have all the bonds uniform and consequently we required that the May c'upons should be attached.

125. What is the source of your information as to the amount of assenting and non-assenting bonds?

A. The source of my information is a list obtained from the trust company in the handwriting of Mr. Stanton.

447 126 I. Is that the only source of information you have?

A. That is the only source of information that I have now.

127 I. Do you know of your own knowledge what the amount of bonded debt of The Mississippi & Missouri Railroad Company was on the ninth of July, 1866?

A. I know from the report made by the secretary of the company.

128 I. Is that your only source of information?

A. That is the only source of information.

129 I. You do not know of your own knowledge whether record is correct or not, do you?

A. I believe it is; but I rely upon the secretary's statement.

130 I. You do not know, do you?

A. I do not know of my own knowledge, because I was not a party to the issuing of the bonds.

131 I. Have you ever inspected the treasurer's books, to see what they issued?

A. I never have.

132 I. Then there may be a mistake in the statement of the bonded debt that Mr. Cook has exhibited?

A. For aught I know there may be a mistake in it.

133 I. What is the source of your information as to the payment of these several amounts that you testify have been paid?

A. The source of my information was derived from Mr. Ebenezer Cook, who from time to time reported that such & such was paid out of the earnings of the Mississippi and Missouri Company, that had come into the hands of the Chicago and Rock Island Road.

134 I. That is the only source of information? Who is Mr. E. Cook?

A. He was an officer of the Mississippi & Missouri Company, and a director in the Chicago and Rock Island Company.

135 I. Was there any agreement between The Mississippi and Missouri Railroad Company and The Chicago and Rock Island Railroad Company, relating to the five-hundred-thousand-dollar loan, other than that set out in the copies of records of the executive committee of the two companies, and embraced in the stipulation of the parties hereto?

A. There was, I think, some agreement before I came into office, but the agreement referred to what occurred between the two companies at the time of their date.

136 I. Those records state fully the agreement between the two companies relating to that loan, do they?

A. So far as I am aware of, they do, unless there was, as I suppose, a prior agreement.

137 int. Then the evidence that you have given relating to that loan was derived from those records, was it not?

A. Derived from those records and from information from the officers of the Mississippi and Missouri Company, their secretary and their treasurer. The records can trace the whole point, I think.

138 I. When was it you had the conversation with Charles Tracy that you have spoken about?

A. It was in the summer of 1868, I should say. I know I exerted myself very much to get some more bonds.

139 I. Did you ever buy any non-assenting bonds, or the Stanton committee?

A. Not one. I never did.

140 I. Did the Stanton committee, to your knowledge?

A. Not that I know of.

448 141 I. Any member of the Stanton committee buy any, to your knowledge?

A. Not that I know of.

142 I. Do you know whether The Chicago, Rock Island and Pacific Railroad Company ever bought any non-assenting bonds?

A. No.

143 I. Your knowledge upon that subject is all hearsay?

A. Precisely.

144 I. All you know about it is what Charles Tracy told you?

A. Precisely.

Re-direct examination by Mr. Grant:

1 I. Was the statement of the indebtedness of the Mississippi and Missouri Company, which you referred to as being furnished by Mr. Cook, published at the meeting of the stock and bond holders on the twentieth day of October, 1865?

A. Yes, sir.

2 I. Were there any officers of the Chicago & Rock Island Company at that meeting?

A. Yes, sir.

3 I. You say there was no written agreement between the committee and The Chicago and Rock Island Company in relation to this three months' interest; you say it was made in October, 1866?

A. Yes, sir.

4 I. Were The Chicago and Rock Island Company then acting as your agents?

A. Certainly.

5 I. And was the retention of this interest for your protection; I mean the committee's protection under the contract of August 1, 1865?

A. Unquestionably.

6 I. It was not retained to benefit The Chicago, Rock Island & Pacific Railroad Company as a company at all?

A. Not at all.

7 I. Tell us what the income bonds were.

A. They were bonds issued by The Mississippi and Missouri Company against income.

8 I. What were they for; what was the consideration?

A. I can't tell you.

9 I. Were they for c'upons past due?

A. I presume they were. Those bonds were issued before I had any connection with the company.

10 I. Did you, as a member of the committee, together abrogate or alter any of the provisions of the P. M. Meyers agreement or the paper of August first, 1866, appointing The Chicago, Rock Island and Pacific Railroad Company their agents?

A. Never. We were very careful not to.

11 int. At the time you employed Grant and Smith, did you seek Grant & Smith, or did they seek you?

A. We sought Grant and Smith.

12 I. Was the interest of the committee and the interests of Grant & Smith identical after decision of the suit in the Supreme Court United States?

A. We thought so.

13 I. Had you employed an attorney to attend the decision of this cause of Howard in Iowa; did you employ an attorney in this city?

A. We employed Judge Emmott to prepare an argument or brief.

449 14 I. I mean to go into Iowa?

A. Yes.

15 I. Who was he?

A. We employed Mr. Taylor, the partner of Judge Emmott.

16 I. When Mr. Taylor returned from Iowa he reported to you?

A. Yes, sir.

17 I. In consequence of that report did you think it for your interest to have attorneys independent of the Rock Island Company?

A. Undoubtedly we thought so before we sent him; the stockholders thought so, and instructed the committee to employ Judge Emmott,

and when it was necessary to send out an attorney to Iowa, Judge Emmott arranged with his partner, Mr. Taylor, to go.

18 I. There was inquiry about wanting this matter closed up both before and after this decision of the Supreme Court of the United States. Do you mean to answer that you meant to terminate your trust as soon as possible?

A. That is all.

19 I. Was the case taken up to the Supreme Court of the United States by the advice or suggestion of the committee?

A. Yes, sir.

Re-cross-examination by Mr. Withrow:

1 int. You say the Peter Meyers contract and the contract of August first was not abrogated or changed?

A. I do.

2 I. How was this agreement to pay three and a half per cent. instead of nine months' interest; what effect did that have upon this contract?

A. That didn't change it; the three months' interest gave us so much more to apply to expenses.

3 I. Who was to be responsible if the amount reserved should not be sufficient to pay the expenses?

A. The Chicago, Rock Island & Pacific Railroad Company.

4 I. The Stanton committee were not responsible?

A. They were to be saved harmless.

5 I. You say that you simply desired to close up your trust speedily; that is your reason for changing the counsel?

A. No; I don't say the reason for changing the counsel.

6 I. Your reason for desiring a distribution?

A. I thought the interest represented by Judge Grant, who was our opposing counsel, and our interests became identical after the decision of the Supreme Court.

7 I. Please explain wherein they are identical.

A. Because we were decreed an amount of bonds which Judge Grant had already in suit against cities & counties in Iowa.

8 I. You mean the subrogated funds; how does that make your interests identical?

A. Because he was prosecuting suits against cities and counties in Iowa, & we wished him to prosecute on our behalf the bonds decreed us.

9 I. Judge Grant is to procure the subrogation of the committee to this fund, is he?

A. The committee had already been subrogated to this fund, as I understand it.

450 10 I. Did you not understand that the stockholders were subrogated to this fund by the decree of this court?

A. We had the advice of counsel on this point, (reads the following:)

"Mem., Dec. 4, 1868.

"The subrogation is not qualified or changed by the amendment of the decree. It is a subrogation of the trustees (for their beneficiaries) to the rights and remedies of the creditors now let in to share in the funds; and of course it operates to the extent that such creditors get satisfaction. Their claims amount to, say, $800,000; and, if they get paid in full all their rights and remedies on county bonds go to the trustee; but, if they get less, the subrogation must be subject to their rights for the collection of the balance of their claims out of those bonds, c'upons, etc.

"C. TRACY."

11 I. You understand that the Stanton committee were subrogated do you?

A. So our counsel here thought.

12 I. Why was it that you instructed Judge Emmott to move the court to change the decree in that respect?

A. I never gave any instructions, because we always thought the committee fully subrogated, as Mr. Tracy states, and we conversed with Tracy on that subject.

13 I. Where was it that you employed Grant & Smith?

A. Here in New York.

JOHN ELLIOTT.

Adjourned to Wednesday, October sixth, 1869, at ten a. m.

OCTOBER SIXTH, 1869—10 *a. m.*

Examination continued.

John Elliott recalled:

By Mr. Grant:

1 int. Have you found any answer to Cook and Drury's letter of November 1st? And if you have, please furnish a copy, also copy of your letter to them, which caused them to write to you on November first.

A. I have found a copy of Wilson & Elliott's reply to their letter of November first, and have also a copy of the letter of 26th October, which induced their letter of November first; the reply is dated November eighth, and refers to Cook & Drury's letter as of the fifth of November instead of the first; I annex copies of Wilson & Elliott's letters to Cook and Drury of 26th October and eighth November, 1868.

2 I. Please produce copies of all receipts and letters indorsed on the contract of August first, 1866?

A. Here they are, as follows:

JOHN ELLIOTT.

"NEW YORK, *26th Oct.*, 1868.

Mess. COOK AND DRURY, *Davenport.*

"GENTS: Not having heard from you relative to the proceedings under Judge Grant's application for the execution of the decree in the Mississippi and Missouri Railroad suit, since we forwarded our answer, we write to inquire what has been done in the matter.

"We understand that Mr. Foster, in compliance with a telegram from Iowa, has forwarded his bonds there. From this we infer that
451 some action has been taken by the court, and are very anxious to learn its nature.

"Please advise us as early as convenient, obliging yours, truly,

"B. WILSON.
"JOHN ELLIOTT."

"NEW YORK, *8th November*, 1868.

"Mess. COOK AND DRURY, *Davenport.*

"GENTS: We have received your favor of fifth instant, and note its contents, for which we are obliged.

"We have been informed that an error, as to the amount named in the decree, to the amount of about $100,000, has been corrected. As you do not allude to it we presume that the change does not in any manner

interfere with the claim of the stockholders, but that they will receive the $16 per share, and interest thereon, in conformity with the original agreement under which they surrendered their stock & agreed to the foreclosure of the mortgages.

"We shall be glad to learn from you if this view of the matter is correct, in order to be able to answer inquiries made of us by the parties interested.

"Respectfully,

"B. WILSON
"JOHN ELLIOTT.

"Should refer to favor of 1st instant."

"NEW YORK, *September* 6, 1866.

"To the UNION TRUST CO., *New York.*

"Please deliver to The Chicago, Rock Island and Pacific Railroad Company, or order, the following securities of the Mississippi and Missouri Railroad Company, viz: Thirty-five hundred and sixty-seven bonds of $1,000 each of the first mortgage land-grant, contained in the following named packages:

One trunk containing.....	974	bonds	of	$1,000	each.
Twenty-four pack'g's "	2,400	"	"	1,000	"
One package "	132	"	"	1,000	"
One do. "	26	"	"	1,000	"
One do. "	35	"	"	1,000	"
	3,567				

"G. W. STANTON, JR.,
"JOHN ELLIOTT,
"BLAKELEY WILSON,
"*Committee.*"

"NEW YORK, *Sept.* 6, 1866.

"Please to deliver the within-named bonds to Thomas E. Walker & Franklin Haven, the trustees named in the mortgage.

(Signed) "F. H. TOWS,
"*Secretary C., R. I. & P. R. R. Co.*"

"The Union Trust Company accepts the above order, and will deliver the within-named bonds to either of the persons named above, on the surrender of this order.

"New York, Sept. 6, 1866.

"J. H. FROTHINGHAM,
"*President.*"

452 "NEW YORK, *Nov. 6th*, 1866.

"THE UNION TRUST CO., *New York:*

"Please deliver to The Chicago, Rock Island and Pacific Railroad Company, or order, the following-named securities, deposited with you of the Mississippi & Missouri R. R. Co.:

"One hundred and ninety-three thousand five hundred dollars of the first mortgage land-grant income bonds.

"Scrip receipts convertible into the said income bonds, amounting to twelve thousand eight hundred and thirty-nine $\frac{88}{100}$ dollars.

"Crane trustee receipts for twenty-four hundred and fifteen dollars.

"Two c'upons of $35 each, of the first mortgage land-grant bonds.
"Also fourteen loose c'upons of $35 each, of the first mortgage land-grant bonds, amounting to four hundred and ninety dollars.

"GEO. W. STANTON, JR.,
"JOHN ELLIOTT,
"BLAKELEY WILSON,
"*Committee.*"

"Received, New York, August 20th, 1866, of G. W. Stanton, jr., John Elliott, & Blakeley Wilson, the parties of the second part to the above agreement, the following-named securities of the Mississippi & Missouri Railroad Company, under and in pursuance of said agreement:
"Nine hundred and eighty-three bonds of $1,000 each, secured by a first mortgage on the eastern division of said railroad.
"Fourteen hundred dollars of the c'upons of said bonds due July 1, 1864, on said division.
"Eighteen hundred & eighty-four & $\frac{52}{100}$ dollars of scrip convertible into income bonds of said division.
"One hundred and seventy-four bonds of 1,000 each, and forty-four bonds of $500 each, of the income bonds of said eastern division.
"Five hundred and sixty-nine bonds of $1,000 each, secured by a first mortgage on the Oskaloasa branch of said railroad company.
"Sixty-nine bonds of $1,000 each, and twenty-one bonds of $500 each of the income bonds of the said Oskaloosa branch of said railroad.
"Five hundred and thirty-two & $\frac{90}{100}$ dollars of the scrip convertible into income bonds of said Oskaloosa branch of said railroad company.

"F. H. TOWS,
"*Secretary C., R. I. & P. R. R.*"

"Received, New York, Sept. 6, 1866, of G. W. Stanton, jr., John Elliott, and Blakeley Wilson, the parties of the second part to the above agreement, the following-named securities of the Mississippi and Missouri Railroad Company, under and in pursuance of said agreement, viz: Thirty-five hundred & sixty-seven bonds of $1,000 each, of the first mortgage land-grant, secured by a mortgage on western division of said road and the lands belonging to said road.

"F. H. TOWS,
"*Sec't'y C. R. I. & P. R. R. Co.*"

"Received, New York, November 6th, 1866, of G. W. Stanton, jr., John Elliott, and B. Wilson, the parties of the second part to the annexed agreement, the following-named securities of the Mississippi and Missouri Railroad Company, under and in pursuance of said agreement, viz: One hundred and ninety-three thousand five hundred dollars of the first mortgage land-grant income bonds.
453 "Scrip receipts convertible into the said income bonds, amounting to twelve thousand eight hundred and thirty-nine $\frac{88}{100}$ dollars.
"Crane trustee receipts for twenty-four hundred and fifteen dollars.
"Two c'upons of $35 each, of the first mortgage land grant; also fourteen loose c'upons of $35 each, of the first mortgage land-grant bonds, amounting to four hundred and ninety dollars.

"F. H. TOWS,
"*Sec't'y C., R. I. & P. R. R. Co.*"

Adjourned to October 7th, 1869, at ten o'clock a. m.

OCTOBER *7th*, 1869, *at* 10 *a. m.*

Examination continued; same parties present.

George T. M. Davis, being called by Mr. Grant, and duly sworn, testified as follows:

1 I. Are you the treasurer of the Mississippi and Missouri Railroad Company?

A. I think I was treasurer since 1862 or 1863. I could not be positive about that.

2 I. How long have you been a director?

A. Well, I was elected a director before I was treasurer.

3 I. Do you remember the loan of The Chicago and Rock Island Railroad Company to The Mississippi and Missouri Company of that $500,000?

A. Yes, sir.

4 I. How was that loan secured?

A. The loan of $500,000 was secured by eight hundred thousand dollars of first land-grant mortgage of the Mississippi and Missouri Railroad Company at sixty-two and a-half cents on the dollar.

5 I. Can you tell up to what period the interest on that loan was paid?

A. I cannot, sir; Mr. Jarvis S. Baker, the book-keeper and assistant secretary, can. At the time I was elected treasurer I insisted that I should select my book-keeper, which the company assented to, & Jarvis S. Baker was employed, and he kept the accounts.

6 I. Will the books show?

A. Yes, sir.

7 I. Where are the books?

A. Well, sir, they have been taken without my knowledge from the safe of the company, which stood over in the railroad office; where they are I don't know. I have no information. They were taken away without my knowledge or consent. I don't know by whom. I can explain: We had a little room, which was called the office of the Mississippi & Missouri Company, out of the same room occupied by the Chicago & Rock Island Railroad Company. It went from the Rock Island room like this room comes out of that, and we always held our meetings in the Rock Island room proper. This safe stood in that little room with a desk, which was Mr. Baker's room, and out of that safe the books were taken.

8 I. Was the key left there so that any person in the office could get in?

A. Baker had possession of the key; but my impression is that there were two keys, and that he carried one, & one was left there in case the parties wanted it. That is my impression now.

9 I. How was that loan of five hundred thousand dollars settled?

454 A. It was settled by giving up the eight hundred thousand dollars of bonds at sixty-two and a-half cents, & they were to come in with this arrangement by which they got bonds at seventy cents under the P. M. Meyers contract.

10 I. What was said at the time about taking off the November c'upons for 1864 for the interest on the loan?

A. Nothing was said about it, and I had no knowledge that they had been taken off; the bonds were only collateral up to that time; nobody had a right to take the c'upons off up to the time we made the settlement.

11 I. You say you cannot state how much interest was paid; you

know that the interest had been paid on that loan—a portion had been paid?

A. It is only an impression. My impression is that the first six months' interest was paid. I may be in error about that; that is my impression, that we paid the first six months' interest.

12 I. What was said. at the time of this agreement to put the eight hundred bonds in under the P. M. Meyers agreement, of putting them in or without the November c'upons?

A. I don't think the c'upon question came up at all, according to my recollection. I had no idea that the c'upon was taken off at all; my understanding was that they came in as all the other bondholders similarly situated—that they came in precisely as the others did.

13 I. Have you ever seen that statement?

(Referring to statement of the indebtedness of the Mississippi and Missouri Company referred to in Mr. Wilson's & Mr. Elliott's testimony.)

A. Yes, sir. I have seen this statement before.

14 I. There is an expression, "January, interest unpaid, $14,000;" can you explain that item?

A. Yes, sir. That interest of $14,000 was the sixty-five unpaid c'upons of the January interest, which we had previously paid, and my own action at the time when we were negociating for the sale of this road, the Chicago and Rock Island, that the money should be advanced to take up these back c'upons; and on the fourteenth day of November, 1865, I received a draft—whether it came from Mr. Tracy I cannot say, (it came by his direction anyhow)—I received a draft of $14,000 on that day, because I put it on my books which I keep as a special deposit, and paid the c'upons with it. That draft was received on the 14th of November, 1865.

15 I. Was that January interest paid with it?

A. It was, sir; those were the sixty-five unpaid c'upons.

16 I. How much of the interest on all those mortgages was paid; the interest on bonds was payable in November and January, was it not?

A. Yes, sir. Well, all that I know is this, that, at the time I paid the last interest, I didn't pay it, because it was always paid through the Corn Exchange Bank. There was an advertisement brought to me, with my name to it, to advertise the payment of interest, and I utterly refused to allow the advertisement to go into the paper until I knew that the money was deposited with the Corn Exchange Bank; it had been deposited there, but this minus; and Mr. Charles Durant, who was at the time president of the Chicago, Rock Island & Pacific Railroad Company, personally pledged me on his honor that this money should be deposited there to take up these c'upons, and upon the faith of that pledge I suffered this advertisement to be put into the paper; as
455 a matter of course, I was tormented to death about it; that was the way, it was made a personal matter that these back c'upons should be paid. I believe I was personally implicated in the payment of this; the plan given me by Mr, Tracy was, that three of them agreed to advance the money, and one of them was a Mr. Hughes; but for some reason or other, he, Hughes, backed out, and the other two gentlemen did not do it, and the thing went over until the sale was made; that is the way these sixty-five c'upons came to be paid.

17 I. The interest on the various mortgages and the income bonds?

A. Yes, sir.

18 I. Do you know anything about the payment of these other liabilities attached to that account?

A. I do not; the understanding was that they were paid; but Mr. Baker is the one who can get at that and give you the information; I can only from hearsay.

19 I. Did you hear it from the Rock Island Company?

A. That I can't say; they were all considered one, the two companies; and there was so much talk it would be utterly impossible for me to designate whether I heard it from them or the other side. I had no interest in the concern; the whole thing was transferred to the committee of these three gentlemen, and I knew nothing about it.

20 I. Do your books show how many bonds were issued of each class?

A. I believe they do, everything of that kind; yes, sir. I had a regular land-book, which contained all the lands in the different counties, which designated them by the legal title. I had that book made, and it was made correctly.

21 I. Was this statement of the indebtedness of the company presented at the meeting of the stock and bond holders on the 20th of October, 1865?

A. That is my recollection, that we had them circulated there.

22 I. Were any of the officers of the Chicago & Rock Island Company present at that meeting?

A. Yes, sir.

23 I. Who were they?

A. Mr. Tracy was there.

24 I. Any other?

A. I think Mr. Cook was there; and, upon my word, whether I was a director that year of the Rock Island Company or not, I don't know; but I was a director for two years in the Chicago & Rock Island. If that was the year, then there were three of us there; there may have been others that I don't recollect now; it was a very full meeting.

Cross-examined by Mr. Withrow:

1 I. You may state whether or not there was any record made of the transactions of the Chicago and Rock Island Company & the Mississippi and Missouri Company, in reference to the five-hundred-thousand-dollar loan.

A. Well, it is a mere act of impression, sir.

2 I. State whether or not these transactions were by the executive committees of the two companies officially.

A. Yes, sir; they were.

3 I. State whether or not it was the practice of those committees to keep records of their proceedings.

A. It was; and then at the meeting of the board would have the proceedings read.

456 4 I. What was your recollection as to the proceedings in reference to this loan, whether recorded and approved?

A. That is my recollection, and if it was not done it was wrong; it was the custom to make everything a matter of record.

5 I. State whether or not there was any resolution passed by the executive committee of the Mississippi & Missouri Company, at the time *of* the equity of redemption of the eight hundred thousand dollars in bonds was released to the Chicago & Rock Island Company, in regard to the surrender to the Stanton committee or its agent.

A. I think there was.

6 I. If any such resolution was passed, would it be in the record of the proceedings of the committee?

A. Yes, sir; I never knew an instance of any resolution being passed

by the executive committee that was not recorded; it was not intended to be, at all events, while I was a member of the executive committee.

7 I. You say that your recollection is that nothing was said of the November c'upons on those bonds at that time or any other time?

A. Well, I can't recollect if there was.

8 I. Who prepared the statement of indebtedness to which your attention has been called?

A. Well, sir, it was prepared by Mr. Baker and some one on the part of the Rock Island office; I think it was Henry E. Crane, and Mr. Tows, the secretary, was in the room.

9 I. From the books of what officer of the railroad company could that statement be prepared?

A. Well, it could have been prepared from the books of the company. The accounts of the treasurer were kept on the books of the company; they did not have but one set of books; that showed everything in the treasurer's account & everything else.

10 I. You say that this $14,000 was applied in the payment of c'upons?

A. Yes, sir; the sixty-five unpaid c'upons.

11 I. On what class of bonds?

A. Well, they were two or three classes of bonds; they were outstanding bonds.

12 I. Are those c'upons in your possession?

A. I think they are, sir.

13 I. Will you produce them?

A. Yes, sir; I will hunt them up & have them classified for you.

14 I. You say it was to pay sixty-five c'upons; you mean sixty-five on each series of bonds, or were there sixty-five c'upons altogether?

A. Well, the $14,000 was to pay the year 1865 c'upons—the unpaid c'upons.

15 I. You mean the year 1865?

A. Yes, sir; the Corn Exchange Bank paid the interest; I never paid any interest on any c'upons except these $14,000 outstanding; but I utterly refused to let the advertisement *to* go into the paper unless I knew the money was deposited in the Corn Exchange Bank.

16 I. Do you know that all the c'upons upon all the different classes of bonds, maturing on the first of January, 1865, and prior thereto, were paid?

A. Upon my own personal knowledge, of course, I don't, because I didn't pay them. The Corn Exchange Bank paid them.

17 I. Do you know that the Corn Exchange Bank paid them?

A. I know it was so represented & understood.

457 By Mr. Grant:

18 I. A great many have been converted into income bonds?

A. That is why the $14,000 had been sent to me as a special deposit.

By Mr. Withrow:

19 I. Then all you wish to be understood as saying is, that there was $14,000 00 placed in your hands to be paid for c'upons, and you so applied it; you do not know whether it paid all outstanding c'upons or not?

A. Of course I can't tell you; I did'nt pay the others. The Corn Exchange Bank always paid the interest, although I was advertised as treasurer.

By Mr. Grant:

20 I. Did they deliver the c'upons afterwards to you or did they retain them?

A. They were always surrendered when the account was settled. Mr. Baker can tell you about that.

By Mr. Withrow:

21 I. Who had the custody of the books of the Mississippi and Missouri Company?

A. Well, I suppose, legally, I had them; in point of fact, the books were always kept over at the Chicago & Rock Island office in this little room, as I told you.

22 I. Where did the secretary of the Mississippi and Missouri Company keep his office?

A. He kept it there.

23 I. Did he have custody of these books?

A. Yes, sir.

24 I. To the same extent you had?

A. Yes, sir.

25 I. Who was the secretary?

A. Mr. Ebenezer Cook. I think Mr. Baker, who was the assistant secretary, made reports to him at the end of every month, in Iowa.

26 I. State what your practice was as treasurer when c'upons were paid.

A. Invariably to cancel them.

By Mr. Grant:

27 I. What efforts by any party have been made to get you to give up these c'upons that you talk about?

A. Mr. Tows sent several times, but I refused to give them up.

28 I. State whether or not you ever paid any other interest on c'upons for the Mississippi & Missouri Railroad Company.

A. I never did; all the others were paid by the Corn Exchange Bank.

Adjourned to meet October 8th, 1869, at ten o'clock, a. m.

OCTOBER 8*th*, 1869, *ten a. m.*

Same parties present and examination continued.

GEORGE T. M. DAVIS recalled.

By Mr. Withrow:

1 I. You may particularly describe the c'upons you paid, giving the series of bonds, the number of the bond from which each c'upon was detached, and the aggregate amount of each series.

458 A. Forty-three c'upons on income bonds, each for $35, as follows: C'upon on bond No. 190, for $35; bond 99, the same; 90 something, (the cancellation has erased the figure,) 96, 95, 189, 179, 188, 187, 178, 177, 109, 112, 182, 76, 77, 191, 97, 108, 110, 111, 107, 183, 184, 113, 132, 131, 134, 120, 133, 117, 135, 116, 119, 115, 191, 193, 192—the word "Income" across the face of them is in red ink; then, also, 91, 90, 89, 88, 38—the word "Income" across the face of them in blue ink. 19 income bonds, January, 1865, $17½ each on bonds 247, 248, 246, 226, 232, 228, 216, 217, 229, 249,—across the face of each the word "Income" is printed in red ink; 142½, the word "Income" in green ink—259, 191½, 252, 250½, 17½; c'upons of July, 1863, 250½; July, 1864, 250½; January, 1864, 250½—across the face of these the word "Income" is printed in blue ink.

C'upons of which the following is a copy:

"On the first of January, 1865, The Mississippi and Missouri R. R. Co., will pay the bearer $35, interest due on their bond No. 334.

"H. PRICE, *Secretary.*"

No. 800, 340, 802, 807, 345, 195, 146, 341, 405, 470, 154, 588, 149, 534, 533, 53, 189, 946, 945, 944, 943, 942, 800, 799, 798, 797, 790, 795, 794, 793, 792, 790, 791, 789, 788, 787, 780, 785, 784, 783, 782, 781, 780, 778, 777, 776, 774, 773, 772, 771, 770, 709, 775, 708, 767, 766, 779, 299, 300, 330, 363, 366, (it looks as though erased or like 364,) 700, 61, 762, 928, 342, 340, 808, 908, 907, 313, 471, 147, 530, 153, 179, 171, 173, 184, 188, 466, 469, 467, 150, 803, 807, 805, 540, 606, 612, 529, 318, 319, 138, 142, 144, 139, 140, 54, 903, 423, 307, 544, 52, 904, 603, 611, 599, 610, 167, 902, 901, 403, 541, 419, 420, 537, 409, 404, 700, 598, 590, 602, 609, 613, 415, 911, 416, 585, 600, 411, 405, 408, 601, 604, 51, 53, 542, 597, 543, 172, 148, 457, 192, 410, 402, 166, 905, 426, 539, 915, 912, 538, 413, 418, 412, 608, 417, 414, 913, 914, 605, 607, 536, 504, 850, 68, 422, 421, 80, 348, 145, 547, 406, 454, 339, 809, 810, 347, 191, 468, 308, 590, 186, 343, 175, 548, 455, 452, 177, 190, 587, 589, 528, 550, 580, 549, 176, 178, 170, 401, 407, 174, 151, 152, 472, 461, 532, 527, 535, 526, 545, 546, 402, 453.

Upon comparing the above numbers with the c'upons there has been a mistake of one; there are 218 c'upons produced, and there are 219 numbers.

The c'upons of which the following is a copy:

"OSKALOOSA DIVISION, 1*st of January*, 1865.

"The Mississippi and Missouri R. R. Co. will pay to the bearer $35, interest due on their bond No. 1, at The Corn Exchange Bank, in the city of New York.

"H. PRICE, *Secretary*,"

On the face of each is printed the figures 17 in red ink. Same c'upon from bond No. 431, 10, 536, 435, 573, 6, 432, 7, 540, 301, 571, 524, 309, 521, 8, 308, 523, 11, 304, 522, 12, 306, 537, 525, 307, 570, 13, 3–5, (middle figure erased by cancellation,) 3–3, 3–2, (middle figure erased by cancellation,) 570, 577, 13, 181, 574, 183, 14, 182, 444, 15, 532, 433, 436, 437, 538, 9, 572, 580, 578, 575, 579, 539, 2, 3, 4, 438, 5–5, (middle figure erased by cancellation,) 49–, (last figure erased by cancellation,) No.—, (figures erased by cancellation.)

Of c'upons as follows:

"The Mississippi & Missouri R. R. Co. will pay to the bearer, at their office, in the city of New York, on the first of January, 1865, $35, due on their bond 105.

'H. PRICE, *Secretary*."

459 On the face of which is printed in red ink the figure 6. Same c'upons from bonds, 107,102, 101, 119, 104, 117, 111, 118, 115, 106, 120, 116, 114, 112, 110, 109, 113, 108, 103, 187, 418, 416, 419, 417, 420, 411, 414, 415, 412, 413, 200, 198, 199, 196, 195, 194, 193, 192, 191, 197, 155, 156, 157, 158, 159.

Same c'upons for $17 50, payable January 1st, 1865, on bonds 882, 542, 541, 540, 538, 539 583, 762, 745, 868, 737, 543, 544, 546, 547, 545, 548, 549, 585, 764, 550, 591.

Same c'upons after the figure 5, in red ink, printed across the face of it, payable in July, 1864—882, 885, 881.

Same c'upons the following is a copy:

"Second mortgage sinking fund of the Mississippi and Missouri Rail-

road Company will pay the bearer $40, interest due on the second mortgage bond No. 368, on the first day of January, 1865, at the Corn Exchange Bank, in the city of New York.

"H. PRICE, *Secretary.*"

Across the face of which is printed in purple the figure 17.
Same c'upon from bond 371, 370.
The total amount that I make out is $13,665 00.

By Mr. Grant:

2 I. State whether or not the November c'upons, 1864, were not also paid at the Corn Exchange Bank?

A. I can't recollect; but the books will show.

GEO. T. M. DAVIS.

FREDERICK A. FOSTER, called by Mr. Grant, and having been duly sworn, testified as follows:

1 I. Are you the plaintiff in the suit of interpleader of Frederick A. Foster, in the circuit court United States, where Mark Howard and others are plaintiffs, and The City of Davenport & others are defendants?

A. Yes, sir.

2 I. Where is your place of business?

A. Fifty-seven Broadway.

3 I. Occupation?

A. Commission merchant.

4 I. Are you engaged in business on the stock exchange, in buying and selling bonds?

A. Not as a regular business.

5 I. You sometimes buy bonds?

A. Yes, sir.

6 I. Do you do that often, or occasionally?

A. I don't buy bonds very often.

7 I. When did you come into possession of the bonds which you claim in this suit?

A. July 29, 1868; about that time; I think that is the entry in my book. (Referring to book.)

8 I. Did you purchase those bonds at the stock board, or at private sale?

A. At private sale.

9 I. How did you buy them?

A. I was advised by a friend to buy them.

10 I. Who was that friend?

460 A. Mr. David Dows.

11 I. What was the conversation between you and him at the time he advised you to buy them?

A. He told me it would be a good purchase.

12 I. Tell me the whole conversation?

A. I don't know that I can remember any particular conversation about it.

13 I. Mr. Dows is a director in the Chicago, Rock Island and Pacific Railroad Company?

A. I don't know, sir.

14 I. Were those bonds quoted at the stock board at that time?

A. I guess not; I don't remember of seeing them.

15 I. What did you pay for them?

A. I paid twelve thousand & five hundred dollars.
16 I. For how many bonds?
A. Ten.
17 I. At how much?
A. $1,000 each and back interest.
18 I. How much back interest?
A. I don't remember exactly what the back interest was now.
19 I. You knew, then, before you bought them, that the bonds had been defaulted for the interest; that the interest was not paid?
A. Yes, sir.
20 I. Did you inquire their market value?
A. I made no inquiries at the time of Mr. Dows.
21 I. All Mr. Dows told you was a good purchase?
A. Yes, sir.
22 I. Did he tell you what they were worth?
A. He told me that they would be worth all that I paid for them.
23 I. How did he tell you that they would be worth that?
A. Be worth it in money, I suppose.
24 I. How would you get the money; they were defaulting bonds?
A. Yes; well, I could collect the money.
25 I. Did you inquire how you could collect it?
A. I presume I did not inquire; I should be perfectly satisfied to make the investment if he said it was a good one without making any inquiries.
26 I. You knew you would have to sue on them when you bought them?
A. Yes, sir; at least I supposed that was the case.
27 I. Did you expect to collect the face of the bonds and the interest, counsel fees besides?
A. I didn't go into that.
28 I. Did he tell you why you would have to sue on them?
A. Yes, sir.
29 I. Did you take any steps to collect them before you brought suit?
A. I put the bonds in my lawyer's hands for collection.
30 I. Who is your lawyer?
A. Mr. Knox.
31 I. Who is Mr. Knox?
A. Of the firm of Fullerton & Knox; I am not sure; Mr. Knox is the man I did business with.
32 I. When did you sue them?
461 A. I suppose they were sued here; I paid no attention to the suit, only in signing affidavits; I left the matter entirely to him.
33 I. You did not send them to Iowa to be sued at all?
A. Yes, sir; I did afterwards.
34 I. When?
A. I don't remember exactly what time; (refers to memorandum;) I can't tell without going to my office; I have got the express receipt; I sent them by express.
35 I. Who' did you send them to?
A. Mr. Withrow.
36 I. Who told you to send them to Mr. Withrow?
A. Mr. Dows, or my lawyer; I don't remember which now; my lawyer here.
37 I. You say you did not know Mr. Dows was a director of the Chicago, Rock Island and Pacific Railroad Company?

A. I know he was a director from report only; I don't know any further than that.

38 I. You knew you would have to litigate these bonds when you bought them?

A. I expected to; yes, sir.

39 I. Did you ever employ Tracy & Olmsted?

A. No, sir.

40 I. What did you pay your counsel in the case?

A. I have not paid him; he has not presented a bill yet.

41 I. Have you paid any expenses?

A. Yes, sir; on the suit I don't think I paid anything; I paid some few dollars for stamps and paper; something of that sort; there was an entry in the books.

42 I. Is it not understood that you are not paying the cost for the collection of these bonds?

A. No, sir.

43 I. Who' did you buy them of?

A. I think Mr. Cox is the name.

44 I. Who is Mr. Cox?

A. I don't know him.

45 I. Is he a broker?

A. I don't know that.

46 I. Do you know where he lives?

A. I do not, sir.

47 I. How did you find out he had these bonds?

A. I was told he had them.

48 I. By whom?

A. Mr. Dows.

49 I. You paid the money for them?

A. Yes, sir.

50 I. Where did you get that money?

A. I had the money in the bank.

51 I. Did you have money deposited in the bank to your account against this payment?

A. Yes, sir.

52 I. Who deposited it?

A. I deposited it, or my clerk did.

53 I. You do not understand my question. Did some third person deposit money in the bank?

A. No, sir.

54 I. You say you are a commission merchant?

462 A. Yes, sir.

55 int. Mr. Dows deals in flour, does he not?

A. Yes, sir.

56 I. If Mr. Dows advised you to buy a lot of damaged flour above the market price, would you do it simply upon his recommendation?

A. If Mr. Dows told me to buy a cargo of flour, I would do so upon his recommendation.

(Question objected to as leading & argumentative.)

57 I. Did Mr. Dows tell you why the interest on these bonds was not paid?

A. No, sir.

58 I. Did not you inquire of him?

A. No, sir.

59 I. You knew that the bonds were defaulted before you bought them?

A. I know very little about the bonds. Mr. Dows recommended me to buy them, and I am in the habit of making purchases of bonds and stocks upon his recommendation, without making any enquiries—have done so repeatedly.

60 I. Did you ever buy a dishonored bond before upon his recommendation?

A. I don't know that I did, sir.

61 I. Have you had any correspondence about these bonds at any time with Mr. Dows, or other parties?

A. No, sir.

62 I. Did you write to Mr. Withrow about that?

A. I think I wrote to Mr. Withrow at the time I sent them to him; I don't remember whether I wrote to him or not.

63 I. Then you did not employ Mr. Withrow to collect them?

A. Yes, sir; I sent the bonds to him for collection, and I suppose I must have written to him at the time.

64 I. You are a man of business, and I suppose you keep a copy of your letters?

A. We claim to; we don't keep everything.

65 I. Have you a copy of your letter?

A. I don't know whether I wrote to him.

(Plaintiffs' counsel advises witness he is not bound to answer questions touching any communications he had had with his attorney in regard to this case.)

66 I. Will you examine your letter-book and see if you have a copy of your letter to Mr. Withrow?

A. I will, sir.

67 I. If you have, will you please furnish a copy? Do you know anything about this suit in Iowa?

A. Very little.

68 I. Did you ever sign a bond or appeal in the suit in the Supreme Court of the United States for $800,000?

A. For $800,000?

69 I. Yes.

A. I don't know whether I have or not.

70 I. Do you know the state of the suit in Iowa?

A. Not exactly.

71 I. I think you said you knew when you bought these bonds you would have to commence a suit?

A. I supposed I should.

72 I. By some remarks made by whom?

463 A. Mr. Dows.

73 I. What were they?

A. I don't remember what the conversation was. I made very few inquiries about them; he recommended me to buy them; as I said before, I bought them upon his recommendation.

74 I. You say you bought bonds before upon the recommendation of Mr. Dows?

A. Yes, sir.

75 I. When?

A. I couldn't tell you without referring to my books.

76 I. What amount?

A. I have $25,000 bonds now that I bought by his recommendation.

77 I. They are not bonds of the Mississippi and Missouri Railroad Company?

A. No, sir.

78 I. If I understand you you made no arrangement with counsel for what they were to charge for the collection?

A. No, sir.

79 I. You have been called upon to pay no costs?

A. Not yet. I may have paid some small items, but the bill has not been rendered yet.

80 I. Do you not know that your name is on the appeal bonds in the suit of the Supreme Court of the U. S.?

A. I signed a number of bonds. I don't remember whether I signed a bond like that.

81 I. You never inquired whether there had been a prior suit on those bonds?

A. No, sir; I did not.

82 I. You are not aware of the fact yet, are you?

A. No, sir.

83 I. Did you read the bonds, or any of them, before you bought them?

A. No, sir; I think not.

84 I. You say you did not inquire the market price?

A. No, sir.

85 I. Did you give the man what he asked?

A. I expect I did. I don't know whether he asked any more than that or not.

86 I. Did you make any computation of how much interest there was due?

A. I don't remember whether I did or not; I suppose I did, though.

87 I. You don't remember?

A. No, sir.

88 I. How much was the overdue interest on them at the time you purchased them?

A. It must have been, I think, in the neighborhood of $2,500, but I am not positive about that.

89 I. Then there was $10,000 of the bonds?

A. Yes, sir.

90 I. And $2,500 of interest?

A. I am not positive.

91 I. You paid, then, the full face of the bonds and the interest?

A. About that, I think.

92 I. Do you know the residence of this person of whom you bought them?

A. No, sir.

464 93 I. In what part of the city did you find him?

A. Well, I couldn't tell you now.

94 I. You cannot tell in what house you found this Mr. Cox?

A. I didn't come in contact directly with Mr. Cox.

95 I. You did not see Mr. Cox at all?

A. I am not positive, but my present knowledge is that I didn't see Mr. Cox.

96 I. Who' did you see?

A. The broker who negociated the sale.

97 I. Who is the broker?

A. I don't know him. Mr. Dows recommended the gentleman to me. I don't remember his name now.

98 I. Did you pay him brokerage?

A. I did not.

99 I. Do the brokers in New York negociate sales without pay?

A. They don't get it very often from the purchaser; the seller usually pays.

100 I. Did you go to the seller in this case, or did the seller go to you? Who hunted up the bonds?

A. I told you that Mr. Dows told me about the bonds, and he told me that this gentleman would get the bonds for me.

101 I. Was his name Cox?

A. I understood Cox was the man who owned the bonds.

102 I. You do not know where the broker lives?

A. No; I suppose the broker was recommended to me by Mr. Dows.

103 I. You suppose so?

A. He may not have been a broker; he may have been in some other business and knew about the bonds.

104 I. You do not know the name of this man?

A. That negociated? No, sir; I don't.

105 I. How do you know he got them of Cox?

A. I understood he did.

106 I. Who did you understand so from?

A. From this man or Dows. We were all three together. I don't remember which mentioned it.

107 I. You would not know the man, then, if you should see him again?

A. I don't believe I should.

108 I. I think that Mr. Dows was a commission merchant?

A. Yes, sir.

109 I. Well then, in what part of the city did you meet this gentleman?

A. I think it was in William street.

110 I. At Mr. Dows' office?

A. No, sir; in the street.

111 I. Where did you close the transaction?

A. I closed it there.

112 I. In the street?

A. It was closed verbally there. I would take the bonds.

113 I. Can you recollect the name of this man from whom you bought them?

A. No, sir.

114 I. You and Mr. Dows are on very friendly terms I infer from your conversation?

A. We are; yes, sir.

115 I. You do a great deal of business with each other, I suppose?

465 A. Not so very much business. I bought stocks and bonds very frequently by his recommendation—quite a good many times. I have loaned him money nearly all the time for the last five or six years.

116 I. So you have loaned him money?

A. Yes, sir.

117 I. You have no need to call on him for money?

A. Sometimes I do, but not very often.

118 I. Does Mr. Dows reciprocate your compliment; does he buy stocks and bonds upon your recommendation?

A. I should not presume to do so. I don't know but he would.

119 I. Did Mr. Dows have any interest in these bonds that you purchased?

A. No, sir.

Cross-examined by Mr. Withrow:

1 I. You may state whose money was used in paying for these bonds.

A. I paid my own money.

2 I. State whether or not you now own the bonds and unpaid c'upons attached to the bonds.

A. Yes, sir.

3 I. You say you never paid any attorney's fees yet in this case. You may state whether or not any bills have been rendered to you.

A. No bills have been rendered.

4 I. State whether or not you expect to pay bills when they are rendered.

A. I do.

5 I. Hold yourself in readiness to pay?

A. Yes, sir.

6 I. You may state for what purpose you sent these bonds to me.

A. I sent them for collection.

F. A. FOSTER.

John Elliott recalled:

By Mr. Grant:

1 I. What is the ordinary mode in dealing in buying stocks and bonds as to credits?

A. They buy and sell for cash.

2 I. Have you ever, in your experience as a banker or business man in New York, heard of the purchase or sale of stocks and bonds on credit?

A. Certainly I have.

3 I. How long a credit usually, when they are sold on credit?

A. I should say sales on time are exceptional sales.

4 I. Have you ever heard of one as long a time as three years?

A. I can swear I never have.

Adjourned to 9th Oct., Saturday, at 10 a. m.

SATURDAY, *October 9th*, 1869, 10 *a. m.*

Same parties present, and examination continued.

Henry S. McComb, called by Mr. Grant, and being duly sworn, testified as follows:

1 I. Where do you reside?

A. Wilmington, Deleware.

2 I. What is your occupation?

466 A. Merchant and manufacturer.

3 I. Are you a director in the Pacific Railroad Company?

A. I was; I am not just now; I am one of the trustees. I have been director since its organization until June, and am still a trustee.

4 I. Are you acquainted with Ebenezer Cook?

A. Very well.

5 I. You have had an income bond & scrip of the Mississippi & Missouri Railroad Company within the last twelve months?

A. I had a bond of something; I don't recollect just what it was.

6 I. How long did you have that bond and scrip?

A. Ever since the company made the division; they gave it for interest; they gave it to me for bonds I had four or five years since.

7 I. You had it ever since it was issued?

A. Yes, sir; it was issued to me.

8 I. It is made payable to bearer?
A. I don't recollect whether to me or to my order.

By Mr. Withrow:

9 I. The scrip is payable to your order?
A. Yes, sir; I suppose so.

By Mr. Grant:

10 I. Did you know anything of there being a suit in Iowa in regard to this?
A. I didn't know anything about it; I didn't know there was a suit in Iowa when I sent the paper out to be collected.
11 I. You do not know anything personally about the position you occupy in this suit?
A. No, I don't.
12 I. You do not know that you are the plaintiff?
A. Yes, sir; I do. I know that whatever securities I had I sent to Ebenezer Cook to collect by process of law.
13 I. By your request or his?
A. By my request. I asked him if something couldn't be made out of it; he said he thought there could. The questions were all at my instigation and not his.
14 I. You know that Ebenezer Cook was secretary of the Chicago & Rock Island Company?
A. I didn't then and don't now. I 'new he was a director.
15 I. You knew he was a director?
A. Yes, sir.
16 I. Did he give you a receipt?
A. He did not; but the concern of Cook & another man sent it.
17 I. Have you a copy?
A. Not here.
18 I. At home?
A. Yes, sir.
19 I. I think it is Cook & Drury?
A. That is it.
20 I. You have Cook & Drury's receipt?
A. Yes, sir; I think it is Cook & something, whatever their firm is. I sent it to Ebenezer Cook and that is the firm receipt I got for it. I have a copy of the letter sending it.
21 I. At home or here?
A. At home.
22 I. Do you not know Mr. Nourse is your attorney?
A. No, sir.
467 23 I. You never directly employed him?
A. No, sir.
24 I. Do you know there has been an appeal taken in your name to the Supreme Court of the United States?
A. No, sir; whenever I give my case to my counsel I let them do as they please; I do not intend to dictate law to them; I let them dictate it to me.
25 I. You do not know that this bond is signed in your name by Mr. Nourse, your attorney?
A. I don't know, but I suppose it would be right.
26 I. You do not know Nourse as your attorney?
A. If Cook employed him it is all right. I sent the bond to be collected; I suppose my counsel would take such steps as are necessary to collect it; that is the way I would do with it.

27 I. If I was your counsel you would know more than you do now.

A. It depends upon the faith I had in you. I have counsel in Chicago—Sweet and Quig—& tell them to do their best, and when they have done their best to write me about it; I don't bother them.

28 I. You have never paid your counsel yet?

A. No, sir; I never paid a retaining fee in my life; they all know enough to trust me. I give them the case and they never say anything about money till the time comes; that was the way with Higgins, Sweet & Quig. I had a case with Lyons & Adams, Racine, Wisconsin, and I have a case in Milwaukee. I never pay anything as retainers, and he has been working on the case for more than a year.

29 I. You have paid no costs in this case?

A. No, sir; nothing.

30 I. In your employment of Ebenezer Cook, did you give them the power to substitute other attorneys?

A. No, sir; nor did I withhold it. I told them to collect that bond by whatever process was necessary—gave them very sweeping authority; I generally do when I go to law, and I don't go to law until I can't help it.

31 I. This debt was due to you for some time?

A. Yes, sir.

32 I. You knew that the Mississippi & Missouri Railroad had sold out?

A. I knew they were going to be, but don't know when the sale took place; I didn't follow it up.

33 I. Did you see the notices of the committee who were to carry out that sale requesting the holders of bonds to assent to the terms of sale?

A. I think I did.

34 I. You declined to assent to the terms?

A. I never did formally assent to it, I believe, except to one bond, which was in account between another man and myself.

35 I. How happened it, this bond defaulting in 1865, that you never instituted any suit, & you have no certificate when you did send it?

A. I sent it within this year; I think within a year. You ask me how it was I did not institute suit?

36 I. Yes, sir.

A. Well, I forgot I had this bond & scrip. I got the money for the other bonds; the bonds had been in the hands of a friend of mine, subject to my order, for four or five years; they never came to my notice until within a year, and then I got the money.

468 37 I. You never heard of their being sold at the stock board?

A. They had been.

38 I. They did not sell at your price?

A. That is why I did not sell them; because I considered there was a certain value to them, and I held them until they came to my price.

39 I. You know anything about Bardwell's bonds?

A. Yes, sir.

40 I. Did you put them in the hands of an attorney in Iowa?

A. Yes, sir.

41 I. When was that?

A. I don't speak absolutely certain; but I think it was a number of months before I put my own in. As to whether it was one, two, three, five, or six months, I don't know really, because the thing went away from my mind. I got the receipt and sent it to Mr. Bardwell.

42 I. In whose hands did you put them?

A. In the hands of Mr. Ebenezer Cook.

43 I. Whose receipt did you get?

A. I don't know whether I got Cook, or Cook & Drury.

44 I. Do you know it was not Polk & Hubbell?

A. I got no such receipt as that.

45 I. Well, the suit is brought in their names, as attorneys.

A. Yes, sir; I expect it is all right.

46 I. You do not know it?

A. I supposed Cook was a lawyer. I don't know whether he is or not.

47 I. He is not the man who sent you the receipt, unless he is a member of the firm of Cook & Drury?

A. I would know Cook's writing if I saw it. Indeed, I know it was not his signature appended to the paper; but I sent them to Ebenezer Cook to be collected.

48 I. He sent you the receipt of some attorney?

A. Yes, sir.

49 I. Of Cook & Drury?

A. I suppose so.

50 I. Who is Mr. Bardwell; does he hold the bonds in his own right?

A. He holds them from the estate of A. H. Fisk; he does not hold them in his own right.

51 I. How long?

A. Fisk has been dead for several years. He didn't know anything about the sale or division of them until I told him when I sold mine, and he said he thought he had some of the same bonds.

52 I. You sold them at the market price?

A. I sold them at principal and interest.

53 I. You say it was not in the market?

A. There are many valuable stocks not on the stock board.

54 I. You know that they have been quoted in the stock board?

A. Yes, sir; they have been sold. I have seen quotations of them years ago.

55 I. At the time you sold them *you* I know that they were not called on the stock board.

A. Yes, sir; there was no market price. The road had been sold out, and there was no regular market price for them.

56 I. You do not know to whom you sold the bonds?

A. I never read the check; I only saw the amount was right. It was certified by the bank on which it was drawn, & therefore perfectly good.

469 Cross-examined by Mr. Withrow:

1 I. Was that check the check of the Chicago, Rock Island & Pacific Company?

A. I think not, sir; it was not the Rock Island check, for I would have known it. When I looked at the check I did'nt know the name on it. It was unfamiliar to me, and I handed it over to a clerk in U. P. R. R. Co.'s office, where I was, and he said to me, "I don't know who it is; but the check is certified, and it is good enough."

2 I. If it had been in the Chicago and Rock Island office you would have known it?

A. I know Tows and Tracy.

3 I. You know that the Bardwell bonds belonged to Fisk?

A. Yes, sir.

4 I. Fisk was dead for several years?

A. Yes, sir.

5 I. And they belonged to Fisk's estate?

A. Yes, sir.

6 I. Mr. Bardwell placed them in your hands for the purpose of collecting them, if you could?

A. Yes, sir.

7 I. And you sent them to Ebenezer Cook to be collected?

A. Yes, sir; I tried to do it here, but could not, and I then sent them to Mr. Cook.

8 I. State what authority you told Cook to take in collecting the bonds.

A. Unlimited authority.

9 I. Cook employed other counsel. Do you approve it?

A. Unquestionably; if it protected my interest.

10 I. You say you paid no counsel fee yet?

A. No, sir; I have not.

11 I. You expect to pay your counsel fee when the business is finished?

A. I expect them to deduct it when the money is collected for me, & send me the balance.

12 I. That is your practice in dealing with counsel?

A. Counsel are very good to me; I don't know whether they are with everybody else. When I have sent bills to be collected that is the way they have done.

13 I. Where was Mr. Bardwell when this arrangement in regard to the sale of the road and the surrender of the bonds was made?

A. He lives in Boston.

14 I. I heard from somewheres that he was abroad.

A. No, sir; he has never been out of this country that I know of.

15 I. He lives in Boston?

A. In Boston.

By Grant:

16 I. You mention the name of Mr. Tows. Did he offer to buy those bonds of you that you held?

A. Yes, sir.

17 I. What did he offer?

A. Twenty cents.

18 I. How long before you sold them was that?

A. I guess a year or two.

470 By Mr. Withrow:

19 I. You say Mr. Tows offered you twenty cents. Did he do it as agent of the trustees named in the bond, or did he want to buy them himself?

A. I don't know; I carried them into his office, and he said the company were not buying them, and that he would give me twenty cents.

20 I. You don't know whether he was acting as agent of the trustees or not?

A. No; I knew it was such a ridiculous offer that I said no more.

21 I. You say that some other gentleman tried to buy these bonds—some one connected with the Stanton committee?

A. No, sir; I wanted him and he wouldn't buy them.

22 I. Did he tell you what you were entitled to?

A. He told me I was entitled to Rock Island bonds at 70 or 90; I don't recollect which.

23 I. Ninety per cent. on the face of your bonds?

A. No; seventy per cent., I think.

H. S. McCOMB.

STATE OF NEW YORK,
City and County of New York, ss:

I, Thomas J. Macrey, a notary public in and for the county and city of New York, do hereby certify that the foregoing depositions of John Elliott, George W. Stanton, jr., Blakeley Wilson, Frederick A. Foster, G. T. M. Davis, & Henry S. McComb were taken before me in the said county and city on the several days therein mentioned; that each of said witnesses were duly sworn before the commencement of his taking their depositions, and that after the same was taken it was read over by and revised by the witnesses, and was signed by him in my presence at the place of taking the same; that during the taking of each of said depositions the complainants in the consolidated bill of Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, filed in the case of Mark Howard et al. v. The City of Davenport et al., were present by Thomas Withrow, their solicitor, & the defendants who have answered said bill except the Chicago, Rock Island and Pacific Railroad Company by James Grant, their solicitor; and that said depositions were taken by the parties pursuant to the stipulation hereinbefore set out.

In witness whereof I have hereunto set my hand and notarial seal, at the city of New York, in the county & State of New York, this 12th day of October, in the year of our Lord one thousand eight hundred and sixty-nine.

[NOTARIAL SEAL.] THOMAS J. MACREY,
Notary Public New York City & Co.

(Endorsed on back:) Filed October 29, 1869.
GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the 29th day of October, 1869, came the plaintiffs, by their solicitors, and filed in said clerk's office a stipulation which is in the words and figures following:

U. S. C., dist. of Iowa.

HOWARD & ALS. *vs.* DAVENPORT & ALS. } Foster & others, intervenors.

It is agreed between the intervenors and the defendants who
471 have answered, except Chicago, Rock Island and Pacific R. R. Co., that the annexed notice is the last notice referred to in the deposition of Blakeley Wilson.

WITHROW AND WRIGHT,
For Complainants.
GRANT & ROGERS,
For Howard and others.

MISSISSIPPI & MISSOURI RAILROAD COMPANY:

Last notice to the holders of bonds and stock of this company.

The undersigned, in pursuance of the trust imposed upon them, have obtained a decree of foreclosure and sale, under and by the terms of which the property and franchise of the company will be sold at public auction on the ninth day of July next.

All holders of the bonds and stock of this company who wish to protect their interest at such sale must deposit their bonds and stock with the Union Trust Company, of New York, on or before the 25th day of June next. New York, May 24th, 1866.

G. W. STANTON, JR.,
JOHN ELLIOTT,
BLAKELY WILSON,
Committee.

my25. 1m.]

(Endorsed:) Filed Oct. 29, 1869.
GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the 29th day of October, A. D. 1869, came the plaintiffs in said consolidated bill, by their solicitors, and filed in said clerk's office exceptions to depositions, which exceptions are in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL. } Exceptions to depositions.

Now comes the complainants in the consolidated cross-bill of Frederick A. Foster et al., and except to the depositions of John Elliott, George W. Stanton, jr., Blakeley Wilson, and George M. T. Davis, filed in said cause, as follows:

1. To the answer to the third inter'ogatory, (being the first upon cross-examination,) because the statements therein contained are immaterial and irrelevant to the issues joined by the pleadings.

2. To the answers to the fourth, fifth, and sixth inter'ogatories for the same reasons, and because the matters therein contained cannot bind the parties to the issues joined.

II. To the deposition of Blakeley Wilson, taken by the complainants to the said consolidated bill, as follows:

1. To the answer to the twenty-fourth inter'ogatory, because the same shows that it contains statements made upon hearsay, and not upon knowledge of the witness.

472 2. To the answer to the twenty-fifth inter'ogatory, for the same reason.

3. To the answer to the eleventh cross-inter'ogatory, for the same reason.

III. To the deposition of George W. Stanton, jr., taken by the defendant, as follows:

1. To all of the answer to the eighteenth inter'ogatory, after the words "but it was my distinct understanding," because—

1st. The answer to the preceeding inter'ogatory shows that the history of the entire transaction to which the answer relates is set out in a record which is the evidence; and

2nd. It states the understanding of the witness instead of the contract of the parties.

2. To the answer to the nineteenth inter'ogatory for the same reasons.

3. The answer to the third cross-inter'ogatory, because—

1st. It contains only hearsay statements.

2nd. It sets out the contents of a printed paper, without laying the foundation for secondary proof of its contents; and

3d. It is not responsive to the question.

4th. It is irrelevant & immaterial.

4. To all of the answer to the ninth cross-inter'ogatory after the word "sir," because—

1. It is not responsive.

2. It states the opinion of the witness instead of a fact.

3. It states an argument touching facts, of which the witness admits he has no recollection: and

4. The record which contains the history of the transaction is in evidence, and must show the contract of the parties; &

5th. It is irrelevant & immaterial.

5. To the answer to the ninth re-direct inter'ogatory, because it is immaterial and irrelevant to the issues joined by the pleadings.

6. To the tenth re-direct inter'ogatory and the answer thereto, for the same reason.

7. To the answer to the twelfth re-direct inter'ogatory, because—

1. It is not responsive.

2. It states an opinion instead of a fact.

IV. To the second deposition of Blakeley Wilson, taken by the defendant, as follows:

1. To the twenty-sixth direct inter'ogatory and the answer thereto, because the contract to which they relate is set out in a record which is in evidence, as shown by a proceeding answer of this witness, and in his answers to cross-inter'ogatories thirty-six, thirty-seven, thirty-eight, and thirty-nine.

2. To the answer to the twenty-eighth direct inter'ogatory, because—

1. It sets out hearsay statements.

2. The statements set out are immaterial and irrelevant to the issues joined in the pleadings.

3. The paper incorporated in the answer cannot be admitted as against the plaintiffs to the consolidated bill, or any of them.

3. To the answer to the thirtieth direct inter'ogatory, because it is shown by the answer to the fifteenth, sixteenth, seventeenth,
473 eighteenth, and nineteenth cross-inter'ogatories that his statements are hearsay only.

4. The answers to the thirty-second, thirty-third, thirty-fourth, and thirty-fifth direct inter'ogatories, because the answers to the twentieth and twenty-first cross-inter'ogatories show that the statements are hearsay only.

5. To the answer *to the answer* to the thirty-sixth direct inter'ogatory, because the answers to the twenty-second and twenty-third cross-inter'ogatories show that its statements are hearsay only.

6. The answer to the thirty-seventh direct inter'ogatory, because the answer to the twenty-fourth cross-inter'ogatory shows that its statements are hearsay only.

7th. To the answer to the thirty-eighth direct inter'ogatory, because the answers to the 25th, 26th, and 27th cross-inter'ogatories show that the statements are hearsay only.

8. To all of the answers to the inter'ogatories embraced in what is termed "re-cross-examination by Mr. Grant," because they show upon their face that it is shown by the preceding answers of the witness that they set ont a contract embraced by a record which is in evidence.

V. To the second deposition of John Elliott, taken by the defendants:

1. To the answer to the fifth direct inter'ogatory, because—

1st. It is hearsay, as shown by the answer to direct inter'ogatory six, and the answers to cross-inter'ogatories 126 to 132, inclusive, and

2nd. It is inadmissible under the issues joined as against the plaintiffs in the cross-bill.

2. The answers to the 8th, 9th, 10th, 11th, 12th, and 13th direct inter'ogatories, because—

1. The answers to the sixth direct and to the 126th to 132nd cross-inter'ogatories, inclusive, show that the statements therein set out are hearsay only.

2. They are entirely immaterial & irrelevant to the issues joined between the parties.

3. To all of the answer to the twenty-third direct inter'ogatory after the words "as it was understood," because—

1. The contract to which the answer relates is evidenced by a written record which is before the court.

2. It states an understanding instead of facts.

4. To the answer to the 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, & 58th inter'ogatories—

1. Because they set out only hearsay statements.

2. They are 'material & irrelevant to the issues joined.

3. None of the statements therein set out are admissible against the plaintiffs.

4. The declarations set out were made by defendant's attorneys, and are now introduced as evidence to bind plaintiffs, as shown by cross-inter'ogatories 1 to 19, inclusive.

5. The declarations of Charles Tracy, and Cook and Drury, as the attorneys of defendants, are not admissible, as the declarations of the plaintiffs' cross-inter'ogatories 138 to 144, inclusive.

5. To the answer to the twenty-ninth cross-inter'ogatory, because it is immaterial and irrelevant to the issues joined in the pleadings.

6. To the answers to all of the re-direct questions and the letters of the members of the Stanton committee to their own attorneys,
474 and the letters of their attorneys to them, for reasons stated in the second paragraph above.

VII. To the deposition of G. M. T. Davis, taken by the defendants, as follows:

1. To the answer to the ninth direct inter'ogatory, because it sets out matters of which the records are the best evidence.

2. To the tenth direct question and the answer thereto, because—

1. The question calls for conversations cotemporaneous with the existence of a contract which is evidenced.

2. It calls for, and the answer gives, parol evidence of a contract reduced to writing.

3. The answer states the opinion of the witness instead of facts.

3. To the twelfth direct inter'ogatory and the answer thereto, because—

1st. The question calls for conversations cotemporaneous with the execution of a contract evidenced by written records.

2. The answer attempts to show the terms of the contract by showing that certain matters were not discussed at the time the contract was entered into.

3. The answer states the understanding and opinion of the witness instead of facts.

4. To the answer to the sixteenth direct inter'ogatory, because—
1s'. It is immaterial.
2nd. It is irrelevant.
3. It is hearsay.

To the words in the answer to the 18th direct inter'ogatory "the understanding was that they were paid," because the answer shows that the witness' information is hearsay only.

WITHROW AND WRIGHT,
For Foster & McCollum.
NOURSE AND KAUFFMAN,
For McComb.
POLK, HUBBELL & BARCROFT,
For Bardwell.

(Endorsed:) Filed October 29th, 1869.
GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the 29th day of October, A. D. 1869, came the plaintiff in said consolidated bill, by their solicitors, and filed in said clerk's office the affidavit of E. Cook; which affidavit is in the words and figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL.

Ebenezer Cook being duly sworn, deposes and says that his attention has been called to a paper purporting to be his deposition in the above-entitled cause, taken of the 17th day of February, A. D. 1869; that he did not dictate or authorize any one to incorporate the said deposition, or any other deposition, the paper over his name, the matter which appears in the answer to the last inter'ogatory therein contained; that he never saw said deposition until after the same was called to his
475 attention in the manuscript of said cause, after it had been determined in the Supreme Court of the United States; that some time during the summer of 1867, and after his deposition in said cause, of the ninth of May, 1867, was made, he was advised by counsel that a statement of the amount properly set apart to be paid the stockholders of the Mississippi and Missouri Railroad Company, was desired of him, and that if he would make such statement it would be used in evidence by agreement of counsel in the case; that thereupon he caused the papers set out as Exhibit A to said deposition to be prepared, and sent the same to one of the solicitors in said cause; that not knowing what portion of, or in what form they desired to present the statement on the hearing, he enclosed with said statement a sheet of paper, on which his name was written, intending that said statement, or so much thereof as was desired, should be written above it; that he was very much surprised when he learned that the matter contained in the answer to said last inter'ogatory had been incorporated in a deposition in which he was made to say that all the sums mentioned in said statement had actually been paid out of the purchase-money of five and a half millions of dollars, by the Chicago, Rock Island and Pacific Railroad Company; that he did not make such statement, did not intend to be so represented, and did not authorize any such statement; that he did not know that

it was set out in said deposition until after the case was determined in the Supreme Court of the United States.

EBENEZER COOK.

Sworn & subscribed before me, this 18th day of October, A. D. 1869.
[SEAL.] WILLIAM W. PEARSON,
Notary Public.

(Endorsed:) Filed October 29th, 1869.
GEORGE B. CORKHILL, *Clerk.*

And afterwards, to wit, on the eighth day of November, A. D. 1869, during the October term of said court, the following decree was entered upon the records of said court, to wit:

UNITED STATES OF AMERICA,
District of Iowa, ss:

At a term of the circuit court of the United States, for the said district, begun and holden at Des Moines, on the third Tuesday, it being the 19th day of October, A. D. 1869:

Present, Hon. J. M. Love, district judge.

MARK HOWARD AND OTHERS *ag't* THE CITY OF DAVENPORT & OTHERS.	No. 69. Chancery. Original bill.
AND	
FREDERICK A. FOSTER, JOHN V. MCCOLLUM, J. Bardwell, and H. S. McComb *ag't* MARK HOWARD & OTHERS, COMPLAINANTS, and defendants in said original bill.	Consolidated cross-bill.

This cause coming on to be heard at this term, to wit, on the eighth day of November, A. D. 1869, upon the consolidated bill of Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb,
476 and the amendment thereto of John V. McCollum, the answers thereto of Mark Howard, and original complainants in the original bill, John Webber, Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher T. Lansing, and Jared F. Harrison, intervening complainants in said above-entitled cause, and The Mississippi and Missouri Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, and The Chicago, Rock Island and Pacific Railroad Company, defendants to said original bill in said cause, all of whom are defendants to said consolidated bill, and the replications of said complainants in said consolidated bill to said answers, and upon motion of all of said defendants to said consolidated bill, except The Chicago, Rock Island and Pacific Railroad Company, for an order directing the receiver to distribute the fund now held by him in this cause, according to the directions of the original decree herein; and thereupon the parties having appeared by their solicitors, and the court having inspected the record, and heard the evidence and the arguments of counsel, and being fully advised in respect thereto, doth order, adjudge, and decree as follows, to wit:

That the complainant John V. McCollum is not entitled to the pay-

ment of any portion of the bonds and c'upons in said consolidated bill and amendment thereto described, or to any portion of the same, out of the funds now in the hands of the receiver in this cause; and that the said consolidated bill as to the said John V. McCollum be and is dismissed without prejudice to his rights to recover on said bonds and c'upons against the defendant The Chicago, Rock Island and Pacific Railroad Company, or other persons.

That the said Frederick A. Foster, J. Bardwell, and H. S. McComb are severally and respectively entitled to share in the said fund in the hands of the receiver, upon the basis and to the extent hereinafter provided, and no other, to wit: That they and each of them are entitled to pro-rata shares or dividends of the said fund, or of the proceeds thereof on an equal footing with complainants and other creditors joining with them in the said original bill, as provided by said decree therein, to wit: as general creditors of the Mississippi and Missouri Railroad Company, and in proportion to the amounts which were due them respectively upon the bonds, c'upons, and scrip set forth in said cross-bill, at the date of the master's report in the said original cause, to wit, the first day of March, A. D. 1868. That said amounts are to be ascertained in manner following, to wit:

As to the claim of said Frederick A. Foster, by adding to the principal sum of said bonds held by him, to wit, the sum of ten thousand dollars, the amount of the c'upons thereon held by him, and matured prior to July 9th, 1866, the date of said sale on foreclosure in said cross-bill mentioned, with interest on said c'upons from the maturity thereof, respectively, at seven per cent. per annum, down to the said ninth day of July, 1866, by then subtracting from said aggregate amount the pro-rata proportion of the proceeds of said foreclosure sale properly applicable to the payment of the said Foster's bonds, to wit, twenty per centum of the amount then due thereon; and by then adding to the remainder thus produced interest at the rate of seven per centum per annum from the ninth day of July, A. D. 1866, to said first day of March, A. D. 1868.

That the amount so due to the said J. Bardwell on the said first day of March, 1868, is to be ascertained so far as the same grows out of the said first-mortgage construction bonds and income bonds held by
477 him as alleged in said cross-bill in the same manner and by the same rule precisely as is hereinbefore provided in respect to the claim of said Frederick A. Foster; and so far as the same grows out of said second-mortgage construction bonds, held by him as alleged in said cross-bill, in the same manner and by the same rule as is hereinbefore provided in respect to said other bonds, except that no deduction is to be made on account of said proceeds of said foreclosure sale, no part of said proceeds being applicable to said second-mortgage construction bonds.

That the amount due to the said H. S. McComb is to be ascertained in the same manner and by the same rule as hereinbefore provided in respect to said Frederick A. Foster, except that no deduction is to be made on account of proceeds of said foreclosure sale, no part thereof being applicable to said McComb's claim.

And it is further ordered, adjudged, and decreed that the receiver herein, from the funds now in his hands and held under the former decree in this cause, first pay and satisfy the costs of all the parties to the said consolidated bill, as well as the parties to the original bill, together with his own costs and charges in the execution of said original decree and of this decree, to be settled and allowed by the court or a judge

thereof; that after the payment of said costs and charges he shall apportion the fund remaining in his hands among the said several original intervening complainants, and the said Frederick A. Foster, J. Bardwell, and H. S. McComb, pro rata in proportion to the amounts of the said claims, as ascertained in the original decree herein, and by this decree, including as to the claims of the parties to the original decree, those matured and not matured, & which said amounts are as follows, to wit:

To Mark Howard, the sum of four thousand four hundred and four $\frac{22}{100}$ dollars, ($4,404 22.)

To John Webber, the sum of ten thousand and two $\frac{59}{100}$ dollars, ($10,002 59.)

To Joseph Young, the sum of five hundred and sixty-two thousand four hundred and twenty-eight $\frac{90}{100}$ dollars, ($562,428 90.)

To Clark Durant, the sum of thirty-six thousand five hundred and sixty $\frac{93}{100}$ dollars, ($36,560 93.)

To Charles W. Durant, the sum of twenty-four thousand one hundred and twenty-eight $\frac{14}{100}$ dollars, ($24,128 14.)

To Robert Murray, the sum of eleven thousand eight hundred and fifty-one $\frac{97}{100}$ dollars, ($11,851 97.)

To Henry Vanderveer, the sum of eight thousand six hundred and thirty-seven $\frac{42}{100}$ dollars, ($8,637 42.)

To William Elliott, the sum of eleven thousand two hundred and thirty-nine $\frac{70}{100}$ dollars, ($11,239 70.)

To George Bliss, the sum of thirty-eight thousand one hundred and sixty-six $\frac{04}{100}$ dollars, ($38,166 04.)

To Betsey Tracy, the sum of twenty-one thousand nine hundred & eighty-four and $\frac{06}{100}$ dollars, ($21,984 06.)

To Harriet Le Conte, the sum of twenty-one thousand three hundred and eighteen $\frac{75}{100}$ dollars, ($21,318 75.)

To Joseph W. Clark, the sum of twelve thousand seven hundred and twenty $\frac{50}{100}$ dollars, ($12,720 50.)

To Volkert P. Douw and Christopher Y. Lansing, the sum of fifteen thousand seven hundred and ninety-four $\frac{08}{100}$ dollars, ($15,794 08.)

To Margaret I. Nisbet, the sum of eight thousand two hundred and seventy-two $\frac{60}{100}$ dollars, ($8,272 60.)

478 To Jared F. Harrison, the sum of fourteen thousand five hundred & twenty-two $\frac{48}{100}$ dollars, ($14,522 48.)

To Frederick A. Foster, the sum of eight thousand eight hundred and ninety-eight dollars, ($9,898.)

To J. Bardwell, the sum of six thousand seven hundred and eighteen dollars, ($6,718.)

To H. S. McComb, the sum of nine hundred and ninety-three dollars.

That from said fund, so apportioned and set apart to each of said parties, the said receiver shall first pay to said party, his representatives, or assigns, in full, (so far as the fund so set apart to him will go,) the amount of his claim now matured and due, (the maturity of the claims of the original parties in said cause to be ascertained from the master's report herein,) together with any additional amount which shall have matured and become due at the time of such payment, in the following order, viz:

He shall first pay in full, or so far as such fund will go, any judgment or judgments of such party, if any, out of the remainder of such money, if any; he shall next pay in full, or so far as such money will go, any and all c'upons which are due on the bonds held by such party; and out of the remainder of such moneys, if any, he shall next pay in full, or so

far as such fund will go, the principal of any bond or bonds which are matured and due; and in case the amount of such matured bonds exceed the sum so applicable to their payment, then he shall pay in full such part of said bonds as said sum shall be sufficient to pay; and the remainder of the fund so apportioned and set apart to each of said parties shall in like manner be applied, from time to time, by said receiver to the payment of such party of the amounts which shall thereafter become due and remain unpaid for either interest or principal, on his or her respective claims, as and when the same shall fall due; and the said receiver shall apply the said remainder of said sum so set apart and appropriated to any of said parties who shall consent to receive the same in payment and satisfaction, so far as the same will go, of the principal sum or sums secured to be paid by guaranteed bonds held by them respectively, though not yet matured, they rebating all future interest thereon to the extent of such payments; that before such payments are made, each of said parties shall produce and deliver to the receiver a written statement, certified by the clerk of the court to be correct, of the parties, date, and of the amount of such judgment of which he claims payment, and shall produce and deliver to the receiver all c'upons and bonds which are due and which may be paid in full, together with a receipt for such payment, and shall deliver to him a receipt stating the amount which is paid on any judgment, bond, or c'upon which may be paid only in part, describing the same so that it may be identified; and in case of partial payment, when made, the receiver shall indorse upon the bond a statement of the amount so paid by him, and that the same was paid from funds in his hands as receiver; and all bonds and c'upons shall be produced to him for such indorsement before such payment shall be made thereon, and the receiver shall file with the clerk of the court in which the judgment so paid in part is entered a statement of the amount so paid thereon, and that the same was paid from funds in his hands as receiver, which statement shall by said clerk be filed and preserved among the papers in the cause.

And it is further adjudged and decreed that, after the said distribution, the said receiver shall proceed to collect from the principal
479 debtors in said judgments on guaranteeed bonds and c'upons, and such bonds & c'upons not in judgment as shall have been delivered to him in accordance with the provisions of this decree, the full amount of such debt as against such principals and each of them, and shall at each term of this court report to the court the amount of moneys in his hands so collected, and shall hold the same subject to further distribution, under the order of the court, to the creditors of the Mississippi & Missouri Railroad Company, and of the surplus thereof, if any remain after the payment of the creditors, to the stockholders of said Mississippi and Missouri Railroad Company.

And it is further ordered, adjudged, and decreed that the shareholders of the Mississippi and Missouri Railroad Company who would be entitled to the distribution of said fund according to the agreement of November first, 1865, and subsequent agreements between the stockholders and bondholders of the Mississippi and Missouri Railroad Company and the said Stanton, Elliott, and Wilson, and who would have been entitled to said fund but for the claims of the creditors of the Mississippi and Missouri Railroad Company, be and they are hereby subrogated, subject to the foregoing provisions of this decree, to all the rights, claims, and remedies of the parties plaintiff respectively, in and upon each and all of said judgments, c'upons, and bonds, as and when the same shall be so paid in full, against the municipal corporations

which are the principal debtors on such bonds and judgments; that such judgments shall remain in full force and effect against such corporations for the benefit of said shareholders, who may enforce the collection of the same in the name of the plaintiffs therein, or otherwise, but at their own costs and charges, by any process, remedy, or proceeding which said plaintiffs might have had for their own benefit; that any and all proceedings which might have been instituted by any of said parties for the collection of said demands shall remain and enure to the benefit of the receiver herein for the use of the parties entitled to this fund, and to this end the original and intervening complainants, respectively, on the payment of such judgments by the receiver, shall execute, acknowledge, and deliver to him an assignment of each judgment so paid, and the receiver shall, on the payment of the several demands herein ordered to be paid to the complainants and intervenors and the said Foster, Bardwell, and McComb, deliver, under the order of the court, to said shareholders, or their lawfully constituted and authorized trustees or agents, such assignments of said judgments, and shall also deliver to them all c'upons and bonds which shall have been paid in full as above directed.

And it is further ordered, adjudged, and decreed, that if, after payment in full to any of said parties by said receiver of all sums which said party shall be entitled to have paid to him out of said funds, according to the directions hereinbefore given, there shall remain in said receiver's hands any portion or residue of the proportion of said funds set apart and apportioned to said party, as hereinbefore directed, the same shall be reported by said receiver to the court, and held subject to such further order and direction as may be made by the court in respect to the disposition thereof.

It is ordered, adjudged, & decreed that the receiver do proceed to distribute, according to the terms of this decree, the funds now in his hands, as follows: He shall as soon as practicable notify each of the parties entitled to share in the distribution of said fund of the amount of his or her dividend of the same, and of the amount of money in
480 his hands applicable to the payment of the same; the party entitled thereto may elect to take payment of the ballance thereof of the bonds of the Chicago, Rock Island and the Pacific Railroad Company, constituting a portion of the fund in the hands of the receiver, at the current market price of said bonds at the stock exchange in the city of New York, on a day to be fixed by the receiver, with the approval of a judge of this court, & with ref'rence to the best interests of all the parties concerned; and if there shall not be sufficient money in the hands of the receiver to pay all of said dividends, and all the parties entitled thereto shall not elect to receive bonds for the balance as above provided, the receiver shall proceed to realize the sum necessary to pay said dividend by converting enough of said bonds held by him into money, by the sale thereof at public sale, at the stock exchange in the city of New York, at not less than the current market price of said bonds at said stock exchange, at such time as said receiver may think proper for the best interests of the parties concerned; but before any such sale the said receiver must first notify the parties, their agents or attorneys, of the time of such sale, and of the amount to be put in the market at any one time, and shall also give five days' public notice of said sale in a daily paper published in the city of New York; provided that no repetition herein contained of the matters adjudicated in the said original decree shall be taken or construed as a re-adjudication thereof as between the parties to said original decree, which said decree is to be regarded

as continuing in full force and virtue, except so far as modified hereby as to provide for the payment of the claims of the said Foster, Bardwell, and McComb, equally with the original complainants and intervenors, and all the full amount of their respective claims as hereinbefore provided.

And thereupon the complainants in said consolidated bill, John V. McCollum, Frederick A. Foster, J. Bardwell, and H. S. McComb, and the defendant The Chicago, Rock Island and Pacifec Railroad Company, by their several solicitors, each pray an appeal from this decree to the Supreme Court of the United States, and it is allowed them or either or any of them on their giving bonds with sureties in the penal sum of five hundred dollars as provided by law for the costs of the appeal; provided that in order to supersede and stay execution of said decree pending such appeal, one or more of the appellants shall give bond with sureties conditioned and to be approved as provided by law, in the penal sum of seven hundred thousand dollars.

And the said Mark Howard, John Webber, Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Joseph W. Clark, Volkert P. Douw, Christopher T. Lansing, Margaret I. Nisbet, & Jared F. Harrison, pray an appeal to the Supreme Court of the United States from so much of said decree as awards any part of the fund in controversy to said Frederick A. Foster, J. Bardwell, and H. S. McComb, and it is allowed them on their giving bond as provided by law in the sum of five hundred dollars.

And the said George W. Stanton, jr., John Elliott, and Blakeley Willson, pray an appeal from so much of said decree as awards any part of said fund to said Foster, Bardwell, and McComb, and also from so much of said decree that provides that the said receiver shall proceed to collect the bonds, c'upons, and judgments which are to be delivered and assigned to him by the complainants and intervening creditors, and hold the same subject to such further distribution under the order
481 of the court to the creditors of the Mississippi and Missouri Railroad Company, and their appeal is allowed on their giving bond, as provided by law, in the penal sum of five hundred dollars.

J. M. LOVE, *Judge, &c.*

And afterwards, to wit, on the thirteenth day of November, A. D. 1869, and during the October term of said court, came the complainants in said consolidated bill, and presented in open court an appeal and supersedeas bond, which is in the words and figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL. *ag't* THE CITY OF DAVENPORT ET AL.	No. 69 chancery. Original bill.

AND

FREDERICK A. FOSTER ET AL. *ag't* MARK HOWARD & OTHERS, COMPLAINANTS, & defendants in said original bill.	Consolidated cross-bill.

Know all men by these presents that we, John V. McCollum, Freder-

ick A. Foster, J. Bardwell, and H. S. McComb, as principals, & John McWilliams, F. R. West, Hoyt Sherman, P. M. Cassaday, William Pritchard, J. C. Savery, F. M. Mills, George C. Tichenor, R. T. Wellslager, Wesley Redhead, George L. Davenport, George A. Davenport, B. F. Murphy, Samuel M. Nickerson, and Daniel Thompson, as sureties, are held and firmly bound unto Mark Howard, John Webber, Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher T. Lansing, Jared F. Harrison, and The Mississippi & Missouri Railroad Company, and The Chicago, Rock Island and Pacific Railroad Company, in the sum of seven hundred thousand dollars, to be paid to the said parties, their executors and administrators; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, & dated this 11th day of November, A. D. 1869.

Whereas the above-named John V. McCollum, Frederick A. Foster, J. Bardwell, and H. S. McComb have each taken an appeal to the Supreme Court of the United States, from said circuit court of the United States for the said district of Iowa, to reverse the decree rendered and entered by said court, on the eighth day of November, 1869, in the above-entitled cause:

Now, therefore, this condition of this obligation is such that if the above-named John V. McCollum, Frederick A. Foster, J. Bardwell, and H. S. McComb shall prosecute their appeal to effect, and answer all costs and damages, if they shall not make good their pleas, & shall in all things abide the decree of the Supreme Court of the United
482 States on the hearing of their appeals, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

JOHN V. McCOLLUM, [SEAL.]
By his att'y of record SAM. W. FULLER. [SEAL.]
FREDERICK A. FOSTER, [SEAL.]
By his attorneys of record WITHROW AND WRIGHT. [SEAL.]
H. S. McCOMB, [SEAL.]
By NOURSE AND KAUFFMAN,
His Attorneys of Record.
J. BARDWELL, [SEAL.]
By POLK, HUBBELL AND BARCROFT,
Att'ys of Record.
JOHN McWILLIAMS. [SEAL.]
F. R. WEST. [SEAL.]
HOYT SHERMAN. [SEAL.]
P. M. CASADY. [SEAL.]
W'M S. PRITCHARD. [SEAL.]
J. C. SAVERY. [SEAL.]
F. M. MILLS. [SEAL.]
GEO. C. TICHENOR. [SEAL.]
R. T. WELLSLAGER. [SEAL.]
WESLEY REDHEAD. [SEAL.]
GEO. L. DAVENPORT. [SEAL.]
GEO. A. DAVENPORT. [SEAL.]
B. F. MURPHY. [SEAL.]
SAMUEL M. NICKERSON. [SEAL.]
DANIEL THOMPSON. [SEAL.]

The above bond is approved as to the form thereof, and also as to sufficiency of the sureties for the penalty of the same.
Nov. 12th, 1869.

J. M. LOVE, *Judge, &c.*

(Endorsed:) Filed November 13th, 1869.
GEORGE B. CORKHILL, *Clerk.*

And, on the same day, to wit, the 13th day of November, A. D. 1869, and during the October term of said court, there was entered an order in said cause, which remains of record in said cause in the words and figures following, to wit:

MARK HOWARD ET AL. *ag't* THE CITY OF DAVENPORT ET AL. } 69 chancery. Original bill.

AND

FREDERICK A. FOSTER ET AL. *ag't* MARK HOWARD & OTHERS, COMPLAINANTS TO said original bill. } Consolidated cross-bill.

Now comes John V. McCollum, J. Bardwell, Frederick A. Foster & H. S. McComb, and in open court present their appeal and supersedeas bond in compliance with the requirements of the order allowing their appeal from the decree heretofore entered on the hearing of the above-entitled cause, and move the court to approve the same; and the
483 court having inspected the said bond as to its sufficiency in form and of the sureties for the penalty thereof, do approve the same, and order that it be filed in said cause.

And afterwards, to wit, on the eighth day of November, A. D. 1869, and during the October term of said court, came the defendants to said consolidated bill, by their solicitors, Grant & Rogers, and filed in said clerk's office a motion; which motion is in the words and figures following, to wit:

Circuit court of the United States, district of Iowa.

MARK HOWARD & ALS. *ag't* THE CITY OF DAVENPORT & ALS. } No. 69. Equity. Oct. term, 1869.

Now come the complainants, and intervening creditors joining with them herein, and move the court for a rule or order on the receiver herein, that he proceed to execute the decree rendered herein by the distribution of the fund in his hands, as provided by said decree, notwithstanding any appeal taken herein by Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, or any of them; or in case the court should be of opinion that said motion cannot be granted in full, that then said receiver be ordered to proceed to execute said decree, except as to such portion of said fund as to which the execution of said decree was suspended by order of the court, made at the May term, 1869.

JA'S GRANT & J. N. ROGERS,
Sol'rs for Complainants & others.

(Endorsed:) Filed November 8th, 1869.
GEORGE B. CORKHILL, *Clerk.*

And afterwards, to wit, on the 12th day of November, A. D. 1869, & during the said October term of said court, there was entered of record in said cause an order in the words and figures following, to wit:

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL. } No. 69. Equity.

Now comes the complainants, and intervening creditors joining with them herein, and move the court for a rule or order on the receiver herein, that he proceed to execute the decree rendered herein by the distribution of the fund in his hands as provided by said decree, notwithstanding any appeal taken herein by Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, or any of them; or in case the court should be of opinion that said motion cannot be granted in full, that the said receiver be ordered to proceed to execute said decree, except as to such portion of said fund as to which the execution of said decree was suspended by the order of the court, made at the May term, 1869.

And the court having heard the same, and being now sufficiently advised in the premises, it is of the opinion that the foregoing motion, owing to the supersedeas bond heretofore filed cannot be allowed. It is therefore ordered and adjudged by the court that the same be overruled.

484 And afterwards, to wit, on the second day of December, A. D. 1869, came the parties & filed in said clerk's office stipulations in the words and figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL.

It is stipulated by and between the complainants in the consolidated bill of Frederick A. Foster and others in the above-entitled cause and the defendants who have answered said bill, except The Chicago, Rock Island and Pacific Railroad Company, that the certificate-book of the Union Trust Company which was introduced in evidence may be omitted from the transcript of the record for the Supreme Court of the United States, it being admitted that it establishes the following facts:

1. That the certificates issued by said Union Trust Company as the agent of the Stanton committee were in the form set out in exhibit No. 2 to the original bill herein.

2. That the numbers of all the bonds surrendered to said trust company by the bondholders assenting to the so-called Peter Meyers agreement appear upon said book; and that the number of the bonds claimed by the said McCollum, Foster, Bardwell, & McComb, do not appear on said book; and that the number of no one of said bonds appears upon the same.

3. That, on the 25th day of January, 1866, The Chicago and Rock Island Railroad Company, by E. W. Dunham, treasurer, surrendered to

said Union Trust Company, as the agent of the Stanton committee, eight hundred first mortgage land-grant bonds, with unpaid c'upons attached from May, 1865, and that upon the surrender of said bonds the said Union Trust Company executed and delivered to said railroad company a certificate in the form set out in the exhibit above-mentioned, certifying that it entitled the bearer to five hundred and sixty thousand dollars of the new bonds to be issued in the execution of the contract for the sale of the property of The Mississippi and Missouri Railroad Company.

4. That, in the month of May, 1866, The Chicago and Rock Island Railroad Company surrendered to said Union Trust Company, as the agent of the Stanton committee, fifteen first mortgage bonds, also ten first mortgage income bonds, all amounting with interest to $25,875; that said trust company issued to said railroad company a certificate in the form above stated, certifying that the bearer was entitled to $25,875 in the new bonds to be issued as above recited.

5. That, on the fourth day of May, 1866, the said railroad company surrendered to said trust company twenty-five Oskaloosa division mortgage bonds, & twelve Oskaloosa division income bonds, amounting to $35,000, with unpaid c'upons attached, from July, 1865, & received from said trust company a certificate in the form above stated, certifying that the bearer was entitled to twenty-one thousand and eight hundred & seventy-five dollars in the new bonds to be issued as above recited.

6. That on the same day the said railroad company surrendered to said trust company one hundred & seventy-four land-grant first mortgage bonds, amounting to one hundred & seventy-four thousand dollars, with unpaid c'upons attached from May, 1865, and received from said trust company a certificate in the form above stated, certifying that it
485 entitled the bearer to one hundred & twenty-one thousand eight hundred dollars in the new bonds, to be issued as above recited.

7. That, on the twenty-sixth day of May, 1866, the said railroad company surrendered to the said trust company second mortgage construction bonds to the amount of six hundred and seven thousand five hundred dollars, and eastern division second mortgage bonds to the amount of three hundred and ninety-six thousand dollars, on all of which there were unpaid c'upons from July, 1865, and received from said trust company certificates in the form above stated, certifying that they entitled the bearer to receive four hundred and ninety-six thousand & fifty dollars in the new bonds to be issued as above recited.

8. That only two c'upons, maturing in 1864, and detached from the bonds, were received from the trust company, from the Stanton committee; that they received from Henry S———, & were detached from first mortgage land-grant construction bonds, and were recie*p*ted for at the same rate as the bonds of that class—seventy per cent. of their amount.

9. That in eight different instances c'upons past due & maturing in 1865 were detached from the bonds when the latter were surrendered, and in each instance the amount thereof was deducted from the bond and certificates given for the balance.

It is further stipulated that the paper introduced in evidence on the hearing of this cause in the circuit court, and known as the Peter Meyers contract, may also be omitted from the transcript for the Supreme Court of the United States, a copy of the body thereof being attached to the original bill as Exhibit D, which is admitted to be a correct copy; and it being further admitted that the original paper shows that stock of the Mississippi and Missouri Railroad Company to the

amount of $2,793,000; eastern division first mortgage bonds to the amount of $983,000; eastern division income and scrip to the amount of $199,277 37; eastern division second mortgage bonds to the amount of $399,000; Oskaloosa division first mortgage, $557,000; Oskaloosa income bonds and scrip to the amount of $80,032 90; land-grant first mortgage bonds to the amount of $3,567,000; land-grant income bonds and scrip to the amount of $207,408 66; second mortgage construction bonds to the amount of $1,111 85 were surrendered by the holders thereof to said Stanton committee, the said holders assenting to and signing the said Peter Meyers agreement.

GRANT & ROGERS,
For Howard and others.
GRANT,
For Elliott and others.

(Endorsed:) Filed Dec. 2, 1869.
GEORGE B. CORKHILL, *Clerk.*

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
ag't
THE CITY OF DAVENPORT ET AL. } No. 69. Chancery. Original bill.

AND

FREDERICK A. FOSTER ET AL.
ag't
MARK HOWARD AND OTHERS, COMPLAINANTS, & defendants to said original bill. } Consolidated cross-bill.

Whereas an appeal was taken by John V. McCollum, Frederick
486 A. Foster, J. Bardwell, and H. S. McComb, from the decree rendered in the case of Mark Howard et al. vs. The City of Davenport et al. at the May term, 1869, of the circuit court of the United States for the district of Iowa, on the several petitions of the said McCollum, Foster, Bardwell, & McComb in said cause, from which decree the said petitioners appealed to the Supreme Court of the United States, and a transcript of the record in said cause has been transmitted by the clerk of the said circuit court to the said clerk of the said Supreme Court;

And whereas since said appeal was entered, the parties, so appearing have, pursuant to the leave granted in said decree, filed in said cause in said circuit court a consolidated bill, upon the allegations of which issues have been joined, evidence taken, and a hearing had, and in which a decree was entered at the October term, 1869, of said court, from which an appeal has been taken to the Supreme Court of the United States by the said McCollum, Bardwell, Foster, and McComb;

And whereas the transcript of the record transmitted in the appeal first above mentioned embraces a very large portion of the record which, but for the following stipulation, it would be necessary to incorporate in the transcript to be sent to the Supreme Court in the second appeal mentioned; therefore—

It is stipulated by and between the parties that the appellants shall be required to transmit and file in the office of the clerk of the Supreme Court of the United States under the second appeal mentioned a trans-

cript only of the consolidated bill filed in said cause, and of all the record made in said cause subsequent to the filing thereof, including stipulations, depositions, affidavits, motions, orders, decree, and appeal bond; that in the said Supreme Court the transcript filed in the appeal first above mentioned shall be taken and considered as a part of the transcript on the appeal from the decree on said consolidated bill.

Provided that nothing herein contained shall conclude the right of either party to have, by proper proceedings, corrections made in either of said records.

It is further stipulated that Howard and others, and Elliott, may, as they think proper, try their cross-appeal on the same record, by giving bond and perfecting appeal before the cause is heard.

GRANT & ROGERS,
For Howard & als.
GRANT, *For Elliot et al.*

(Endorsed:) Filed Dec. 2, 1869.
GEORGE B. CORKHILL, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, United States of America, ss:

I, George B. Corkhill, clerk of the circuit court of the United States for the district of Iowa, do hereby certify that the foregoing is a full, true, and complete transcript of the record and proceedings in the foregoing entitled cause, on and after the filing of the consolidated bill, in which Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, are plaintiffs, and Mark Howard and others are defendants, as full, true, and complete as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and the seal of said court at Des Moines this 13th day of December, A. D. 1869.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

Iowa Davis

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

No. 130

JOSE RIBON, J. MUNOZ, R. H. CLARK, S. MARSH AND WM. SOHEIR,
Appellants,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY,
Appellees.

No. 359.

Appeal from the Circuit Court of the United States for the District of Iowa.

ARGUMENTS FOR APPELLANTS

BY JAMES GRANT.

Dec. 3, 1872

Globe Steam Print, Davenport.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

JOSE RIBON, J. MUNOZ, R. H. CLARK, S. MARSH AND WM. SOHEIR, *Appellants*,
vs.
THE CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY, *Appellees.*
No. 359.

Appeal from the Circuit Court of the United States for the District of Iowa.

ARGUMENTS FOR APPELLANTS

BY JAMES GRANT.

STATEMENT OF THE PLEADINGS.

Jose Ribon, Munoz, Clark, Marsh and Sohier, filed in the Circuit Court of Iowa, their bill in equity for themselves and other bond and stock holders of Mississippi & Missouri Railroad Company, against the Chicago, Rock Island & Pacific and Mississippi & Missouri Railroad Companies, in which they aver that said Mississippi & Missouri Railroad Company is a corporation created by the general laws of the State of Iowa in the year 1852, to build a railroad from Davenport, on the Mississippi river, to some point at or near Council Bluffs, on the Missouri river; that the corporation, prior to October, 1865, had acquired from the United States and the State of Iowa, a land grant of about six hundred thousand acres of land in the State of Iowa, and constructed about one hundred and forty-two miles of railroad on its main line from Davenport to Kellogg, and about fifty miles on a branch called the Oskaloosa division, running from a point on the main line called Wilton, via Muscatine to Washington, in Washington county, Iowa.

That said corporation, in the building of its road, had executed five mortgages—one for a million of dollars on the first division of its road and all its machinery, from Davenport to Iowa City; second, a second mortgage on the same for four hundred thousand dollars; a third mortgage on the Oskaloosa division for five hundred and ninety thousand dollars; a fourth on the division from Iowa City to Council Bluffs, including a land grant of about five hundred thousand acres for three million six hundred and twelve thousand dollars, called first land grant construction mortgage; and a fifth on the whole road, equipments, land and property of every description, for six hundred and ninety-one thousand dollars, called second construction land-grant mortgage.

The said corporation had also issued about three millions and a half of stock from its organization until 1865, in shares of one hundred dollars each.

In October, 1865, the said corporation had become em-

barrassed, and neglected to pay the interest on various classes of bonds which thereby became liable to foreclosure for the whole debt

At a meeting of certain stock and bondholders, held in New York on 20th October, 1865, it was resolved to sell out the entire property to the Chicago & Rock Island Railroad Company, (now Chicago, Rock Island & Pacific Railroad Company,) for the sum of five and a half millions of dollars, which was to be divided among the bond and stock holders according to the following scale :

To first-mortgage bondholders par and interest to July 1st, 1865	$1,256,490
To second-mortgage bondholders, $400,000 at 80 per cent	$320,000
To third-mortgage, Oskaloosa division, $595,939 at 62 1-2 per cent	$416,212
To fourth-mortgage first land-grant construction, $3,868,550 at 70 per cent	$2,714,635
To fifth-mortgage, second-construction bonds, $693,764 at 30 per cent	$208,129
To $3,452,500 of stock at 16 per cent	$552,400
To foreclose	32,134
	$5,500,000

Messrs. Geo. W. Stanton, jr., Jno. Elliott, and Blakely Wilson were appointed, at this meeting, a committee to arrange with the Chicago & Rock Island Railroad Company the mode and terms of payment, and to make an arrangement with some trust company to receive the bonds and stock of parties assenting to the sale, and issuing certificates therefor, stating what the holder of said certificate was entitled to receive.

On the first day of November, 1865, a contract was entered into by the said Mississippi & Missouri Railroad Company, and Chicago and Rock Island Railroad Company, a corporation created by the laws of Illinois, in pursuance of the proceedings of the meeting of 20th Oct.; that

the Mississippi and Missouri Railroad was to take proper steps, with all possible dispatch, to cause the mortgages on its whole line, lands, depots, equipments, &c., to be foreclosed, and its entire property to be sold so as to transfer a perfect and unincumbered title to such incorporated company in Iowa, as the Chicago & Rock Island Company might designate, to become the purchaser and owner thereof.

The Chicago & Rock Island Railroad Company was to cause to be incorporated in Iowa a company which should purchase said property and pay for it five and a half millions of dollars, according to the above scale, either in the bonds of the new company, guaranteed by the Chicago & Rock Island Company, or of a consolidated company, to be composed of the two, the Chicago & Rock Island Company to have the possession of the road from date of the contract, and to pay interest on the purchase at the rate of seven per cent. from the 1st of December, 1865.

The said committee, Stanton, Elliott and Wilson, made a contract with all the stock and bondholders who chose to assent thereto, reciting the terms of sale, and requiring all such stock and bondholders as did assent thereto to authorize said committee to foreclose the mortgages on the property, complete the sale, and assent to all the terms required by said meeting and contract as to the division of the property, and excluding from the benefits thereof all bond and stockholders who did not assent to it.

All the bondholders but those holding about one hundred and eighty-five thousand dollars worth, did assent to the said terms and sign the said contract, and deposit their bonds with the Union Trust Company, and take their receipt for the same, specifying what they were to have.

All the stockholders, but about six thousand shares, also signed said agreement assenting to the terms of sale.

To cut off the rights of non-assenting stock and bondholders, a foreclosure and sale of all the property was nec-

essary, and this, the said committee, as soon as they got control of a majority of the bonds, undertook to do.

Before the said committee, Stanton, Elliot and Wilson, had taken any proceedings for that purpose, in February, 1866, Messrs. F. P. James & Co., of New York, holding about six hundred thousand dollars of the second construction land-grant bonds, the last mortgage on the whole road, refused to assent to the terms of sale whereby their bonds were scaled to thirty per cent., and commenced proceedings in Iowa to foreclose their mortgage through the trustees thereof, Thomas C. Durant and others, and the Chicago & Rock Island Railroad Company, to arrest the proceedings of F. P. James & Co., bought them out at forty-five per cent., and one-half of the thirty-two thousand dollars devoted by the resolution of 20th Oct., 1865, for foreclosure expenses, and having obtained possession of his bonds, assented with them to the terms of sale, executed the agreement of the stock and bondholders to the terms of sale of 20th October, 1865, and signed an agreement with the other assenting stock and bondholders, called the Peter Myers agreement, and thus gave to the trustees or committee-men of the stock and bondholders, Messrs. Stanton, Elliott and Wilson, the control of a majority of all the bonds in all the mortgages.

The foreclosure suit of Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, trustees of the last or second construction mortgage was then controlled by said trustees, Stanton, Elliott and Wilson, and the Chicago & Rock Island Railroad Company, and the trustees of the other trust-mortgages, to-wit, Edward W. Dunham, Thomas E. Walker and Franklin Haven, were brought in as party defendants, and at the May term, 1866, of this Court, such proceedings were had that, by consent of the trustees in all the mortgages, the cause was referred to Thomas F. Withrow, as special master, who reported at that term the amount claimed to be due under each deed of trust or mortgage, which report was assented to, and a decree made by consent for the sale of the property by said master under

each mortgage, which sale, after due notice, took place at Davenport, on the 9th day of July, 1866.

In the meantime the Chicago & Rock Island Railroad Company had caused to be incorporated, in the State of Iowa, the new company, which it had proposed to receive the title to the property when the committee, Stanton and others, should obtain a perfect title by foreclosure of all the mortgages, called the Chicago, Rock Island & Pacific Railroad Company, which, when incorporated in Iowa, was composed of Ebenezer Cook, John F. Tracy, David Dows, Thomas F. Sturges and Oliver Charlick, all of them directors or officers of the Chicago & Rock Island Railroad Company, of Illinois, and which, in 1866, became consolidated with the Iowa company under the same name.

On the 3d day of July, 1866, Ebenezer Cook, John F. Tracy, David Dows, Thomas F. Sturges, for and on behalf of the Chicago, Rock Island & Pacific Railroad Company, agreed that said company should purchase the property of the Mississippi & Missouri Railroad Company, if it could be purchased for a sum not exceeding five millions of dollars at the sale under a decree of foreclosure in the United States Circuit Court for the district of Iowa, and hold it, after the purchase, in trust, to carry out in good faith certain articles of agreement made by the Mississippi & Missouri Railroad Company, dated 1st November, 1865, and particularly that the parties of the second part, Stanton, Elliott and Wilson, should receive five and a half millions of dollars in the bonds of the Chicago, Rock Island & Pacific Railroad Company referred to in said articles.

And, in consideration of this guarantee, the said Stanton, Elliott and Wilson agreed not to bid at the said foreclosure sale of the Mississippi & Missouri Railroad Company.

This agreement was ratified and approved by the Chicago, Rock Island & Pacific Railroad Company, on the same day, in consideration that Stanton, Elliott and Wilson, committee as aforesaid, would not bid at the said sale.

And on the 9th day of July, 1866, and before the said sale took place, the said Stanton, Elliott and Wilson, committee or trustees for the assenting stock and bondholders, ratified this agreement of 3d July, and agreed to pay to the trustees in the several mortgages, the amount of the bid which the Chicago, Rock Island & Pacific Railroad Company might make at said sale.

And in pursuance of said agreement when the sale took place, on the 9th of July, 1866, the said Chicago, Rock Island & Pacific Railroad Company bid for and purchased the whole property of the Mississippi & Missouri Railroad Company, in Iowa, for the following sums :

The first division and machinery, from Davenport to Iowa City, for one million of dollars, under the first and second mortgages; the Oskaloosa division for three hundred thousand dollars, under the third mortgage, and the division from Iowa City to Council Bluffs, including the lands granted by the United States, for eight hundred thousand dollars ; and thus having purchased all the property under the prior mortgages, no sale or bid was made under the last or second construction mortgage, and said committee did not bid at said sale.

The Chicago & Rock Island Railroad Company was consolidated with the Chicago, Rock Island & Pacific Railroad Company of Iowa ; the bonds for five and a half millions, purchase of 1st November, 1865, were executed and delivered to the trustees, Stanton, Elliott and Wilson, or their agents, and on the 1st of August, 1866, the said Chicago, Rock Island & Pacific Railroad Company procured for themselves, by a written paper, the appointment of agent of said trustees, and agreed to deliver to the stock and bondholders of the Mississippi & Missouri Railroad Company, their respective scaled shares of said five and a half million of dollars, and to pay to the bondholders in the foreclosure suit, all that they were entitled to receive under the said foreclosure decree.

The said Chicago, Rock Island & Pacific Railroad Com-

pany also procured from the trustees in the four mortgages under which the property was sold, the agency of said trustees, and agreed with them to pay to the holders of bonds their distributive share of the proceeds.

And the said Chicago, Rock Island & Pacific Railroad Company has paid to all the assenting bondholders their share of the five and a half millions of dollars, and has delivered over to a receiver appointed by this Court, the assenting stockholders' share of the said five and a half millions agreed to be paid to them under said scale of 20th October, 1865.

And all of the bondholders of the various classes of bonds that have assented to the said sale of 20th Oct., and 1st November, 1865, and received their pro-rata share, except about one hundred and eighty-five thousand dollars, of which one bond of a thousand dollars is in the second mortgage of the first division, twenty to thirty thousand dollars on the Oskaloosa division, and the balance of said one hundred and eighty-five thousand were on the first and second land-grant construction mortgages.

And all of the stockholders have assented to said sale except the holders of about six thousand shares.

The said Chicago, Rock Island & Pacific Railroad Company also made an agreement with the said Stanton, Elliott, and Wilson, on the 27th day of December, 1866, to indemnify them against the claims of the non-assenting stockholders.

The plaintiff refers to the whole record of the suit of Durant and others vs. The Miss. Co., now in this court, in which the property was sold; he refers to the case of Howard *et al.*, vs. The City of Davenport, and others, in which copies of the proceedings of the meeting of 20th October, 1865, and the contract of sale of 1st November, are set out in full; and the sixteen per cent. to be divided among the stockholders, decreed to go to holders of certain bonds guaranteed by the Mississippi & Missouri Company, and

to copies of the contracts of 3d and 9th of July, 1866, of the 1st of August, 1866, and the 27th of December, 1866, which they make part of this bill.

And the said Jose Ribon and Jose Munoz bring this suit as well for themselves as all the non-assenting bondholders who are alike situated, and who may become co-plaintiffs and bear their share of the costs of this suit.

And the said Ribon and Munoz say that they are the owners and holders of first construction mortgage bonds, bonds Nos. 10 and 11, for $1,000.00, and interest since November, 1864, and income bond on the same; No. 88½ for $500.00, and interest since 1st May, 1865, which latter bond they have lost; also No. 10 is lost. They are also the owners of second mortgage bonds Nos. 452, 453, 454, 455, 456, 457 for one thousand dollars each, and interest on them since January 1st, 1865, of which No. 452 is lost; and second construction mortgage bonds Nos. 881, 731, 732, 733, 734, 735, 736 for $500 each and interest on since January 1st, 1865, making $10,000 second construction mortgage bonds and interest, and $2,500 first construction mortgage bonds and interest; and that neither the said plaintiffs, nor any persons owners of them since 20th October, 1865, have assented to the said terms and contract of sale.

Copies of bonds and coupons are hereto annexed.

And the said Ribon and Munoz say that they are the owners and holders of 354 shares of stock in the said property held for their benefit.

And the said plaintiffs further aver that the said Chicago, Rock Island & Pacific Railroad Company, in the fall of 1866, after they became the agents of said Stanton, Elliott, and Wilson, purchased about seventy-five thousand dollars of the bonds of said Mississippi & Missouri Railroad Company at the scale price, and by such purchase, while acting as the agents of said trustees, and pay in the scale price, extinguished and cancelled the same. The only outstanding bonds of said Mississippi & Missouri Railroad Company, of which the plaintiffs have any information, are

three owned by Horace Taylor, of New York; ten owned by Henry Granniss, of New York; and six or seven owned by ——— Bardwell, of Massachusetts; one by Henry S. McComb, of Delaware, and ten by Frederick Foster, of New York, all of which are being litigated against the Mississippi & Missouri, and Chicago, Rock Island & Pacific Railroad Companies, and others, by suits ——— said Mississippi & Missouri Railroad Company, which has never assented to the terms of said sale.

And the said Richard Clark says that holder and owner and holder of three hundred shares of stock in said Mississippi & Missouri Railroad Company, which has never assented to the said terms of sale.

And said Sylvester Marsh says he is the owner of $21\frac{51}{100}$ shares of non-assenting stock.

And the said plaintiffs, shareholders, for themselves and such other shareholders as never assented to the terms of said sale, who will become parties to this suit, and pay their share of the costs, file this bill in connection with said non-assenting bondholders, plaintiffs, to set aside the sale Mississippi & Missouri Railroad, its franchises and property, under the said foreclosure decree.

The stockholders, plaintiffs, hereto annex copies of their certificates of stock transferred or endorsed in blank.

They further aver that, since the sale of 1st November, 1865, the Mississippi & Missouri Railroad has ceased to do any business. Its board of directors have met but once, and then only to remove an officer and appoint an attorney.

The directors of said company neglect and refuse to apply to the Court to set aside the sale under said foreclosure, which sale was confirmed by this Court in October, 1866.

And these plaintiffs all aver that they never knew or heard of the agreements of 1st and 9th of July, and 10th of August, and 27th of December, 1866, until about the time of bringing this suit.

And the said Ribon and Munoz, holders of said bonds, and said Munoz, Clark, Sohier, and Marsh, holders of said stock of said Mississippi & Missouri Railroad Co. bring this suit against said Chicago, Rock Island & Pacific Railroad Company and said Mississippi & Missouri Railroad Company for the purpose of setting aside the sale under said foreclosure, on the 9th of July, 1866. And they aver that all the trustees in said foreclosure suits, and said Stanton, Elliott, and Wilson, committee or trustees of the stock and bondholders who assented to said sale, are citizens of New York or some other State, and not of Iowa, and have no interest whatever in said decree or the results of said sale or said foreclosure; that the only persons interested therein are the plaintiffs and others like them, holding non-assenting bonds and stock, and the said Chicago, Rock Island & Pacific Railroad Company, the purchasers at said foreclosure sale and said private sale.

And the plaintiffs aver that said sale on said 9th of July, 1865, under said foreclosure decree, is utterly null and void, and fraudulent in law, by reason of said agreement of said Chicago, Rock Island & Pacific Railroad Company and said Stanton, Elliott, and Wilson, trustees or agents of the assenting bondholders, that the former would purchase the property at any price they could get, not exceeding five millions of dollars, and the latter, in consideration thereof, agreeing not to bid at said sale, and as against the non-assenting stock and bondholders, in view of the agreement to foreclosure already referred.

The plaintiffs say that road, machinery, real and personal property, land franchises, is now worth not less than twelve millions of dollars.

They say that Thomas F. Withrow, who, as master, sold said property, was then, and is now, an attorney of said Chicago, Rock Island & Pacific Railroad Company, and although perfectly competent and qualified in every other respect, is not a proper person to act as master on the re-sale of said property.

Your petitioners aver that the said Chicago, Rock Island & Pacific Railroad Company, by reason of said fraudulent purchase, are entitled to no benefits arising from said sale, and are liable to the plaintiffs for the entire amount they received from the sale of said road, and machinery and the sale of any of said lands, some of which have been sold, and said lands not sold, all of which are worth an average of ten dollars per acre.

Your petitioners pray for a writ of subpœna against the the said Chicago, Rock Island & Pacific Railroad Company, to be and appear before this Court, on a day therein named, and answer all the allegations of the bill as if proposed by special interrogatories.

That the said sale, under said foreclosure decree of 9th of July, 1866, confirmed at the October term, 1866, of this Court be set aside, annulled, and declared fraudulent and void: that said Chicago, Rock Island & Pacific Railroad Co. may be decreed to account of any land sold, and the value thereof; that a master may be appointed to take said account and resell said property of every kind and description sold under said decree: that the money from said accounting and said sale be applied, first, to the payment of said non-assenting bonds of plaintiffs and others who come in, and the residue applied to the plaintiffs, holders of said non-assenting stock and others who may come in as parties plaintiff, and for — such other and further relief as the nature of the case may require.

See record, pages 1 to 7.

The agreement referred to in the bill of 3d and 9th July, 1866, are as follows:

Agreement between Ebenezer Cook, John F. Tracy, David Dows, Thomas F. Sturges, and Oliver Charlick, of the first part, and George W. Stanton, Jr., John Elliott, and Blakely Wilson, committee, of the second part.

The parties of the first part severally agree and undertake

that the Chicago, Rock Island and Pacific Railroad Company shall purchase, if it can be purchased at a sum not exceeding five millions of dollars, the property of the Mississippi & Missouri Railroad Company, its various divisions, franchises, &c., at the sale under a decree of foreclosure of the United States Circuit Court for the district of Iowa, and shall hold it after such purchase, in trust, to carry out in good faith certain articles of agreement made by the said Mississippi & Missouri Railroad Company with the Chicago, Rock Island & Pacific Railroad Company, dated November 1st, A. D. 1865. And particularly that the said parties of the second part, as provided in the last-mentioned agreement, shall receive five millions five hundred thousand dollars in bonds, either of the said Chicago, Rock Island & Pacific Railroad Company, whose payment shall be guaranteed and assured by the Chicago & Rock Island Railroad Company in some form or way that shall legally bind the said Chicago & Rock Island Railroad Company or in bonds of a railway company which shall be formed by the consolidation of the said Chicago and Rock Island Railroad Company with the Chicago, Rock Island & Pacific Railroad Company.

And further do the parties of the first part guarantee, promise, and agree to and with the parties of the second part that if, and at the expiration of three months from the 9th day of July, 1866, the said parties of the second part have not received, whether from legal delay, impossibility in equity, or other cause, bonds of the par value of five and a half millions of dollars of a kind and description above alluded to and fully mentioned and described in the agreement between the Mississippi & Missouri Railroad Company, and the Chicago, Rock Island & Pacific Railroad Company as aforesaid, and then the said Chicago & Rock Island Railroad Company shall, at its own expense, convey to the said parties of the said part all the property and franchises of the Mississippi & Missouri Railroad Company as conveyed to the said Chicago, Rock Island & Pacific Railroad Company by the deed of the master at the sale of foreclosure aforesaid.

The consideration of this guarantee is that the said parties of the second part agree, at the request of the parties of the first part, not to bid at the said foreclosure sale of the Mississippi & Missouri Railroad Company.

In witness whereof all parties have hereunto put their hands the 3d day of July, 1866, in the city of New York.

(Signed) EBENEZER COOK.
(Signed) JOHN F. TRACY.
(Signed) DAVID DOWS.
(Signed) THOMAS F. STURGES.

In consideration of one dollar and the agreement of Messrs. Stanton, Elliott, and Wilson, committee, not to bid at the sale of the Mississippi & Missouri Railroad Company, as mentioned in the above agreement, the Chicago, Rock Island & Pacific Railroad Company therewith authorized by a vote of their board of directors, hereby promise and agreed with the said committee that they will buy in the Mississippi & Missouri Railroad if it can be purchased for five millions of dollars; that they will hold the said Mississippi & Missouri Road in trust to carry out a certain agreement made by the Mississippi & Missouri Railroad Company with the Chicago & Rock Island Railroad Company, dated November 1st, 1865; that they will give the committee $5,500,000 in the first-mortgage bonds, bonds either of the Chicago, Rock Island & Pacific Railroad Company or of a new company made by the consolidation of the said Chicago, Rock Island & Pacific Railroad Company with the Chicago & Rock Island Railroad Company; and finally that, if the said Chicago, Rock Island & Pacific Railroad Company have not, by the 6th day of Oct., 1866, given to the said committee $5,500,000 of bonds of a kind and description above mentioned, they will convey to said Mississippi & Missouri Railroad, its divisions, and all its property, just as deeded to them, to the said committee at the expense of the Chicago, Rock Island & Pacific Company.

Witness the signature of the president of the Chicago, Rock Island & Pacific Railroad Company this 3d day of July, 1866.

{ SEAL OF THE COMPANY. } (Signed) JOHN F. TRACY,
President of the C., R. I. & P. R. R. Co.

The agreement of 1st August, 1866, and all the other exhibits in the case, are found on pages 7 to 16.

A subpœna was duly issued, and served. The Chicago, Rock Island & Pacific Railroad Company appeared and demurred to this bill, for the following causes:

1. There is no equity in the bill.

2. That the trustees in the mortgage and foreclosure suit, are not parties to this suit.

3. That it appears, in and by said bill, that all the persons interested in the distribution of the funds now in the hands of the receiver, are necessary parties to the bill.

4. That no such case is made in and by the bill, as entitles the plaintiffs to the relief prayed.

Annexed to and made part of this record, is a copy of the record in the foreelosure suit, and in the suit of Howard vs. Davenport; but as the demurrer admits the allegations of the bill and there will not be any contest as to what these facts are, we do not repeat them.

DECREE APPEALED FROM.

The Court below entered a decree sustaining the demurrer. An appeal was then prayed and allowed.

ERRORS.

The Court erred in sustaining the demurrer on either the 1st, 2d, 3d or 4th ground, and erred in dismissing the bill.

ARGUMENT.

The Court erred in sustaining the demurrer, in the 1st cause thereof, that there was no equity in that and the 4th; that no such case was made by the bill as entitled the plaintiff to relief.

These causes are in substance one, and they go to the very foundation of the relief sought.

This bill is brought by a part, and in behalf of $185,000, of bondholders who did not assent to the sale of the Mississippi & Missouri Railroad, and by a part and in behalf of six thousand shareholders who did not assent thereto.

A portion of the bond and stockholders of the Mississippi & Missouri Railroad Company, in October 1865, resolved to sell their road to the Chicago & Rock Island Company for five millions, provided it could be divided according to a certain scale. A committee was appointed to procure the assent of the bond and stockholders to such scale and to make a bargain with the Chicago & Rock Island Company.

On the 1st November, 1865, a contract was entered into between the two companies. (record, page 61) whereby the Mississippi & Missouri Company was to cause the mortgages against its road to be foreclosed, so as to give a good title to the purchaser to be named by the Chicago & Rock Island Company. On the same day, the committee appointed at the meeting in October to arrange the manner and terms of sale, and procure the assent of the bond and stockholders, made an agreement (called the Peter Myers agreement, page 64) agreeing to the terms of sale, and authorizing the committee to proceed to foreclose the mortgage, carry out the bargain so as to give a good title to the purchaser, and divide the proceeds of the of 1st November, 1865, according to the scale agreed upon.

The committee having obtained the assent of all the bondholders but $185,000, and all the stockholders but 6,000 shares, obtained a foreclosure in May, 1866, and sold the property on the 9th July, 1866.

This foreclosure was for the sole purpose of cutting off the non-assenting bond and stockholders. If they had all assented, the foreclosure would have been useless.

When the sale was about to take place, the Chicago Rock Island & Pacific Railroad Company, created by the Chicago & Rock Island Company for that purpose made a fraudulent agreement with the trustees or committee, that the latter should not bid at the foreclosure sale, and that they would bid, not five and half, but as high as five millions, and then pay the five and a half to the assenting parties. And in consideration of this the committee agreed not to bid at that sale.

The Chicago, Rock Island & Pacific Company did not bid five millions of dollars, but two millions one hundred thousand, and thus retained the *pro rata* share of non-assenting bondholders, the difference between the two sums. The directors of the Mississippi & Missouri refused to bring this suit, and the plaintiffs' bond and stockholders, for themselves and others, bring it as soon as they are informed of the fraudulent purchase.

That the plaintiffs show equity in their bill, and a right to bring this suit from the refusal of the officers of the Mississippi & Missouri Company to do it, is what we propose to establish.

The bill, in its admitted facts, is an application to set aside a sale under a foreclosure suit, on the ground of a fraudulent agreement to prevent bidding. The object of this was to prevent competition and reduce the amount to be received by the plaintiffs, creditors and stockholders of a corporation whose officers refuse to bring this suit, and who as agents acting for it are parties in law to the fraudulent agreement.

All such sales as are made by a combination of bidders to prevent competition are fraudulent ~~fraud.~~ void

The following cases establish this doctrine as we think beyond controversy.

An agreement by parties not to bid against each other at a public sale vitiates the sale, and will be set aside.

Loyd v. Malone, 23 Illinois, 43.
Smith v. Greenlee, 2 Devereaux, 126.
Martin v. Ranlett, 5 Richardson, 541.
Piatt v. Oliver, 1 McLean, 295 ; and cases cited.
Jones v. Caswell, 3 Johnson's cases, 29.
Doolin v. Ward, 6 Johnson, 194.
Wilbur v. How, 8 Johnson, 444
Howard v. Castle, 6 Term Reports, 642.

Any agreement or combination, the object and effect of which is to stifle competition is illegal, and no party to the agreement can derive any benefit from the sale.

Hamilton v. Hamilton 2 Richardson's Equity, 355.

This case is parallel with the one at bar.

Mapps v. Sharpe & Co., 32 Ill., 13 ; and cases cited.

"This contract" (agreement if plaintiff would pay a sum, defendant would not bid at a foreclosure sale) "is illegal and against established principles as resulting in a combination to prevent competition at an auction sale—and thus sacrifice the property of the debtor to the prejudice of himself and other debtors. It is against good morals, sound policy and cannot receive the sanction of a court of justice. The fact that the debtor assented does not meet or avoid the evil."

Meechs v. Bennett, Hill & Denio, 191.

This Court has held all such arrangements to prevent sale of such property fraudulent and void. See

Drury v. Cross, 7 Wallace, 299.
James v. Railroad Co., 6 Wallace, 752

Judicial sales are void where the purchaser prevents others from bidding, and the proper relief is by bill in equity.

Cocks v. Izard, 7 Wallace, 559.

The fraudulent intent and all the other allegations to

give this jurisdiction on the facts being conceded by the demurrer, the sole other question before the Court is, had the court of equity jurisdiction to entertain this bill by a stockholder against the Chicago, Rock Island & Pacific Company, the perpetrators of the fraud, and the Mississippi & Missouri Company, whose directors refused to apply to set the sale aside.

The reasons of the Court below were that a court of equity has only jurisdiction for preventive relief at the suit of a stockholder of a corporation for fraud by a third party, and none for affirmative relief.

Samuel v. Holladay, 1 Woolworth, 400, 420.

This Court has established a different doctrine in two cases—which take no such gro2nds as that held by the Court below.

Dodge v. Woolsey, 18 Howard, 331.

We understand the case of Dodge v. Woolsey to lay down the law to be that a stockholder has a remedy against the corporation or its directors to restrain the doings of acts, which amount to the violation of their charter, and that a stockholder has a remedy against individuals, in whatever character they profess to act, if the subject of the complaint is the denial of a right growing out of the franchise for which there is no remedy at law, and the circumstances of each case must determine the jurisdiction of a court of equity to give the relief sought.

The jurisdiction extends to *enquire into*, and to enjoin, as the case may require it to be done, any proceedings, by individuals, in whatever character they may profess to act, if the subject is the denial of a right growing out of the corporate franchises for which there is no adequate remedy at law —Page 341.

Another and more recent case is Jones v. Bolles, 9 Wallace, 364.

In that case, Bolles, a stockholder filed a bill against the

corporation and Jones to enjoin the setting up of a decree for purchase money and to have an agreement annulled because it was a fraud: and the decree below, enjoined an action against the company, and directed the defendant to execute a release (affirmative relief) and declared the agreement entered into between the company and the defendant void (affirmative relief), and the Court held that the corporation was a proper party defendant, though the relief asked was for its benefit.

We might rest this cause or these causes, and ask for the same relief as in Drury v. Cross

As there are some other authorities pertinent to the matter at issue we add them.

"To constitute an illegal application of the funds of a corporation, there need not be intentional fraud (to give equity jurisdiction) by the company or its officers or agents; but when the money that should belong to the stockholders is divided contrary to the charter, that constitutes sufficient illegality to give equity jurisdiction, will be treated as a breach of trust and fraud on the minority, and equity will prevent such fraud by injunction and relieve against it when committed at the suit of such stockholders as have not assented thereto."

March v. Railroad, 43 N. H., 515.

This case cites Salomons v. Laing, 6 Eng. Railway cases, 289, where the Court held, that the shareholder is not only entitled to maintain a suit in his own name for preventive relief, but to compel the restoration of money improperly applied, against his own and other corporation parties to it.

Courts of equity will neither sanction nor permit frauds by a majority against the minority.

Stevens v. R. & B. R. R. Co., et als., 29 Vermont, 545.

This question was directly decided in

Peabody, et al., v. Flint, 6 Allen, 52.

Where it is held "a minority of the stockholders may maintain a bill in equity for themselves and other stockholders for conspiracy and fraud, whereby their interests had been sacrificed against the corporation, its officers, and all others who participate therein."

The modern rules of the English equity Courts have been adopted in the United States, extending the jurisdiction of a Court of Chancery over the civil rights of the members of moneyed corporations and individual rights in their capital and business. And a bill will be maintained, filed by a number of stockholders owning one-fifth of the capital stock, suing for themselves and such stockholders as are not citizens, of Iowa, nor defendants in the bill.

Bacon, et al., v. Robertson, et al., 18 Howard. 480.

Many other cases pertinent to this question are referred to in these cited.

All the other questions which might be made, as to bringing suit after discovering fraud, the non-residence of other parties &c. are fully covered by the allegations of the bill and need no discussion.

The second and fourth causes of demurrer require but little comment.

None of the parties named are necessary, because, if their interest is with the plaintiff, they have the right to come in under the bill.

The real defendants who hold the fraudulent title are before this Court, and this Court can administer equity against them, without affecting or impairing the rights of other parties.

Neither the trustees in the mortgages, nor the committee

or trustees of the Mississippi & Missouri Company are necessary parties. They have no interest.

Assenting stock and bondholders have no interest; they have agreed to take five and a half millions for their interest, and they must be content therewith.

If it should be made to appear that the Chicago, Rock Island & Pacific Company have encumbered the property, they must pay such incumbrance, and no decree now made could effect such incumbrance.

The only real party defendant is the Chicago, Rock Island & Pacific Company, which has committed this fraud, and which can receive no benefit from it.

In a resale of the road, the plaintiffs must bid the amount of the former sale (two millions one hundred thousand) and the overplus will be applied first to pay the non-assenting bond, and then to non-assenting stockholders.

None of the argument in favor of the demurrer can be applied to the creditors who have sued; the fraud had a direct tendency to reduce the amount they might receive, and we know of no case which deprives the Court of jurisdiction as to them.

JAMES GRANT,
for Appellants.

IN THE

Supreme Court of the United States.

JOSE RIBON ET AL., Appellants,

v.

THE CHICAGO, ROCK ISLAND, AND PACIFIC RAILROAD COMPANY, AND THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY, Appellees.

ARGUMENT OF THOMAS F. WITHROW

For the Appellee, The Chicago, Rock Island, and Pacific Railroad Company.

Pearson, Printer, corner 9th & D sts., Washington, D. C.

IN THE

Supreme Court of the United States.

José Ribon *et al.*, *Appellants*,

v.

The Chicago, Rock Island, and Pacific Railroad Company, and The Mississippi and Missouri Railroad Company, *Appellees*.

Argument of THOMAS F. WITHROW for the appellee, The Chicago, Rock Island, and Pacific Railroad Company.

The complainants' bill, and the exhibits appended thereto, show the following state of facts:

On the 18th day of October, 1865, the defendant and appellee, The Mississippi and Missouri Railroad Company, was a corporation which had been created and was existing under the laws of the State of Iowa. Its capital stock was $3,452,500. It then owned and operated a railroad from the city of Davenport, on the Mississippi river, to the town of Kellogg, in Jasper county, in that state. It also owned a large amount of lands which had been granted by Congress to aid in the construction of the road. Its bonded debt at the time amounted to over seven millions dollars, secured by several mortgages—one upon the eastern division of its railroad, extending from Davenport to Iowa City and Muscatine; one upon what was known as the Oskaloosa division, extending from Muscatine to Washington; one, a second incumbrance, upon the first division; and one, a second mortgage upon the three divisions, while it was a first mortgage upon that portion of the road west of Iowa City, and

upon the lands which had been granted by act of Congress. At the date above mentioned the company was in an insolvent condition. A meeting of some of the bond and stockholders was on that day held in the city of New York to consider the condition of the company. At the meeting various expedients were proposed and discussed for its relief. It all resulted in a reference of the subject to the executive committee of the board, with a request that they submit a report to the next meeting "as to the advisability of selling the railroad."

The next meeting was held on the 20th, the following day. The committee reported "that after the fullest consideration they can give to the subject they have arrived at the conclusion that a sale of the road to the Chicago and Rock Island Railroad Company at five millions five hundred thousand dollars is advisable, unless at least one million five hundred thousand dollars can be immediately provided by the bond and stockholders for the completion and equipment of the road to Des Moines." They also recommended the distribution of the five million five hundred thousand dollars upon the following scale:

1st mortgage, eastern division	$1,000,000	
Income bonds	214,000	
Interest July 1st, 1865	42,490	
		$1,256,490
2nd mortgage, eastern division, $400,000, at 80c.		230,000
Oskaloosa division bonds	$590,000	
Income do.	73 000	
Do. scrip	2,939	
	$665,939, at 62½c.	416,212
Land grant division bonds:	$3,612,000	
Income do.	253,000	
Do. scrip	12,550	
	$3,878,550, at 70c.	2,714,635
2nd mortgage construction bonds	691,000	
Scrip	2,764	
	693,764, at 30c.	208,129
Capital stock	$3,452,500, at 16c.	552,400
		$5,467,866

The report was adopted, and B. WILSON, GEORGE W. STANTON, JR., and JOHN ELLIOTT were appointed a committee "to arrange the mode and terms of payment with the Chicago and Rock Island Railroad Company, and details of sale authorized by this meeting."[1]

On the 1st day of the following November the Mississippi and Missouri and the Chicago and Rock Island Railroad companies entered into an agreement whereby the first named company undertook to cause the mortgages upon its line of road and other property "to be foreclosed, and its entire property, real and personal, sold, so that the purchaser shall be able to transfer a perfect and unincumbered title to such incorporated company in Iowa as the Chicago and Rock Island Railroad Company may designate to become the owner and purchaser thereof." The Chicago and Rock Island Railroad Company undertook on its part to cause the said five millions five hundred thousand dollars to be paid in manner and form as therein provided and agreed, and also "to cause to be incorporated a company in the State of Iowa, under the general law of said state, which shall purchase the said property for the said sum of five millions five hundred thousand dollars, and complete the said road to Des Moines."[2]

The Chicago and Rock Island Railroad Company was placed in possession of the property, in consideration of which it undertook to pay interest on the purchase money, the said said sum of five millions five hundred thousand dollars, from date until the consummation of the sale by the transfer of title and the payment of such purchase money.[3]

About the same time the committee above mentioned, and which is designated in the record as the Stanton com-

1. Complainants' bill, record, p. 2, fol. 6 and 7; Proceedings of stockholders' meeting, pp. 50–57.
2. Complainants' bill, p. 2, fol. 7 and 8; Exhibits, copy of contract, p. 61.
3. Exhibits, copy of contracts, record, p. 63.

mittee, entered into a contract with a majority in interest of the holders of the capital stock and of each series of bonds; in which contract reference is made to the proceedings of the bond and stockholders' meeting in the city of New York, by which they "were instructed to sell the said railroad, its franchises and equipments, for five millions five hundred thousand dollars;" to the contracts between the railroad companies above mentioned; and declaring that the "committee to effectuate this clearance and sale are about to foreclose the various mortgages, in order subsequently to convey a clear title to the purchaser or purchasers." The committee also covenants "to use all diligence in foreclosing the mortgages now encumbering the title of the Mississippi and Missouri Railroad Company to its property; to convey the same after such foreclosure, as more fully set forth in the agreement between the Chicago and Rock Island Railroad Company and the Mississippi and Missouri Railroad Company hereinbefore referred to, for five millions five hundred thousand dollars."[4]

All of the bondholders of all the series, excepting a few who held bonds amounting to about one hundred and eighty-five thousand dollars, signed the agreement, assenting to the sale and the scale of distribution; and all of the stockholders, except the holders of about six thousand of the thirty-four thousand shares, also assented.[5]

Before this was accomplished the trustees in the second land grant mortgage commenced, in the Circuit Court of the United States for the District of Iowa, proceedings to foreclose that mortgage, a majority of the holders of the bonds refusing to assent to the agreement. The committee acquired control of a majority of each series of bonds by the purchase by the Chicago and Rock Island Railroad Company of the bonds held by the parties directing these proceeding, and by the signing by said company,

4. Complainants' bill, pp. 2 and 3, fol. 8; copy of contract, record, p. 64.
5. Complainants' bill, p. 3, fol. 9.

as to said bonds, the contract between the Stanton committee and the bondholders above mentioned.[6]

Thereafter the foreclosure suit was controlled by the said Stanton committee. The trustees in all of the mortgages became parties, and at the May term, 1867, of the court a final decree was entered foreclosing all of the mortgages, finding the amount due on the bonds of each series, and ordering a sale of the property mortgaged by a special master appointed for that purpose. The sale was made, after due notice, at Davenport, on the 9th of July, 1866.[7]

On or about the twenty-third day of the preceding May the Chicago and Rock Island Railroad Company caused a company to be incorporated in Iowa, under the name of the Chicago, Rock Island, and Pacific Railroad Company, with power to acquire, own, and use the railroad of the Mississippi and Missouri Railroad Company, and complete the road to Des Moines. The stockholders of this company were Ebenezer Cook, John F. Tracy, David Dows, Thomas F. Sturges, and Oliver Charlick, all of them directors or officers in the Chicago and Rock Island Railroad Company.[8]

On the 3d day of July, 1866, Ebenezer Cook, John F. Tracy, David Dows, Thomas F. Sturges, and Oliver Charlick, as parties of the first part, entered into a contract with the Stanton committee, party of the second part.

Inasmuch as complainants' principal grievance is founded upon this agreement, we copy it entire:[9]

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6. Complainants' bill, p. 3, fols. 9 and 10.

7. Complainants' bill, record, p. 3, fol. 11; decree in Durant et al. vs. The Mississippi and Missouri Railroad Company et al., record, p. 70; Master's report of sale, record, p. 262; Supplemental report, record, p. 267; decree affirming report of sale, record, p. 272.

8. Complainants' bill, record, p. 3, fol. 12.

9. Complainant's bill, record, p. 4, folio 12–14, inclusive. Copy of the contract, record, p. 338.

'Agreement between Ebenezer Cook, John F. Tracy, David Dows, Thomas F. Sturges, and Oliver Charlick, of the first part, and George W. Stanton, jr., John Elliott, and Blakely Wilson, committee, of the second part.

"The parties of the first part jointly and severally agree and undertake that the Chicago, Rock Island, and Pacific Railroad Company shall purchase, if it can be purchased at a sum not exceeding five millions of dollars, the property of the Mississippi and Missouri Railroad Company, its various divisions, franchises, etc., at the sale under a decree of foreclosure of the United States circuit court for the district of Iowa, *and shall hold it after such purchase in trust, to carry out in good faith certain articles of agreement made by the said Mississippi and Missouri Railroad Company, dated November first, A. D.* 1865, *and particularly that the said parties of the second part as provided in the last mentioned agreement shall receive five millions five hundred thousand dollars, in bonds, either of the said Chicago, Rock Island, and Pacific Railroad Company, whose payment shall be guaranteed by the Chicago and Rock Island Railroad Company in some form or way that shall legally bind the said Chicago and Rock Island Railroad Company, or in bonds of a railroad company which shall be formed by the consolidation of the said Chicago, Rock Island, and Pacific Railroad Company with the Chicago and Rock Island Railroad Company.*

"*And further, the said parties of the first part guarantee, promise, and agree, to and with the parties of the second part, that if at the expiration of three months from the ninth day of July,* 1866, *the said parties of the second part have not received, whether from legal delay, impossibility, or other cause, bonds of the par value of five and one-half million of dollars, of a kind and description above alluded to, and fully mentioned and described in the agreement between the Mississippi and Missouri Railroad Company and the Chicago and Rock Island Railroad Company, as aforesaid, that then the said Chicago, Rock Island, and Pacific Railroad Company shall, at its own expense, convey to the said parties of the second part all the property and franchises of the Mississippi and Missouri Railroad Company, as conveyed to the said Chicago, Rock Island, and Pacific Railroad Company, by the deed of the master of the sale of foreclosure aforesaid.*

"The consideration of this guarantee is that the said parties of the second part agree, at the request of the parties of the first part, not to bid at the said foreclosure sale of the Mississippi and Missouri Railroad Company.

"In witness whereof, all parties have hereunto put their hands the third day of July, 1866, in the city of New York.

"EBENEZER COOK.
"JOHN F. TRACY.
"DAVID DOWS.
"THOMAS F. STURGES.

"In consideration of one dollar, and the agreement of Messrs. Stanton, Elliott, and Wilson, committee, not to bid at the sale of the Mississippi and Missouri railroad, as mentioned in the above agreement, the Chicago, Rock Island, and Pacific Railroad Company, therewith authorized by a vote of their board of directors, hereby promises and agrees with the said committee that they will buy in the Mississippi and Missouri railroad if it can be purchased for five millions of dollars; that they will hold the said Mississippi and Missouri road

in trust to carry out a certain agreement made by the Mississippi and Missouri Railroad Company with the Chicago and Rock Island Railroad Company, dated November first, 1865; that they will give the committee five million five hundred thousand dollars in first mortgage bonds either of the Chicago, Rock Island, and Pacific Railroad Company, or of a new company made by the consolidation of the said Chicago, Rock Island, and Pacific Railroad Company with the Chicago and Rock Island Railroad Company; and finally, that if the said Chicago, Rock Island, and Pacific Railroad Company have not, by the ninth day of October, 1866, given to the said committee five million five hundred thousand dollars in the bonds of a kind and description above mentioned, they will convey the said Mississippi and Missouri roilroad, its divisions, and all its property just as deeded to them, to the said committee at the expense of the Chicago, Rock Island, and Pacific Railroad Company.

"Witness the signature of the president of the Chicago, Rock Island, and Pacific Railroad Company this third day of July, 1866.

[SEAL OF COMPANY.] "JOHN F. TRACY,

"*President Chicago, Rock Island & Pacific R. R. Co.*"

On the 9th of July, and prior to the sale under the decreee of foreclosure, the following explanatory agreement was executed by the members of the Stanton committee:[10]

Whereas the Chicago, Rock Island, and Pacific Railroad Company have agreed to purchase the property of the Mississippi and Missouri Railroad Company at the sale under the decree of foreclosure, and have agreed to pay Stanton, Elliott, Wilson, committee, five million five hundred thousand dollars in bonds, as fully set forth in an agreement between said company and said Stanton, etc., dated July 3d, 1866:

Now we hereby declare the intent and meaning of said agreement to be, that we, the said Stanton, etc., committee, are to pay to the plaintiffs, the trustees in the several mortgages, the amount of the bid that the Chicago, Rock Island, and Pacific Railroad Company may make at said sale, and, for such payment to the trustees so to be made by us, are to receive from said company the sum of five million five hundred thousand dollars, in manner and form as set forth in said agreement of July 3d, 1866.

Witness our hands, at Davenport, Iowa, July 9th, 1866.

G. W. STANTON, JR.,
B. WILSON,
JOHN ELLIOTT.

The Chicago, Rock Island, and Pacific Railroad Company, of Iowa, became the purchaser at the sale, as was stipulated in this agreement. The property was sold in

10. Complainants' bill, record, p. 4, folio 14. Copy of the paper, record, p. 339.

divisions. The first division, extending from Davenport to Iowa City, was bid off for one million dollars ($1,000,000); the Oskaloosa division, for three hundred thousand dollars ($300,000); and the division extending from Iowa City to Council Bluffs, including the lands embraced in the land grant, for eight hundred thousand dollars ($800,000). The Stanton committee did not bid at the sale.[11]

On the 20th of August, 1866, the Chicago and Rock Island and the Chicago, Rock Island, and Pacific Railroad Companies were consolidated; the bonds of the consolidated company were executed and delivered to the Stanton committee, in accordance with the terms of the agreement between the Mississippi and Missouri Railroad Company and the Chicago and Rock Island Railroad Company of the 1st of November, 1865, and above mentioned.[12]

On the 1st of August, 1866, the Stanton committee entered into a contract with the Chicago, Rock Island, and Pacific Railroad Company, reciting the agreement between the Mississippi and Missouri Railroad Company and the Chicago and Rock Island Railroad Company of the 1st of November, 1865, by the terms of which the said Chicago, Rock Island, and Pacific Railroad Company undertook to distribute to the bond and stockholders of the Mississippi and Missouri Railroad Company the bonds which were agreed to be delivered in payment of the five millions five hundred thousand dollars purchase money, with the interest which should accrue thereon. It is alleged in the bill that the Chicago, Rock Island, and Pacific Railroad Company undertook by this agreement to pay to the bondholders in the foreclosure suit all that they were entitled to receive under said foreclosure decree; but the contract is set out as an

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11. Complainants' bill, record, p. 4, folio 15.

12. Complainants' bill, record, p. 4, folio 14. Articles of consolidation, record, p. 67.

exhibit to the bill, and discloses an agreement to "give to the *plaintiffs* in said suit of foreclosure all that they should be respectively entitled to receive;" and the record in the foreclosure suit is also made an exhibit, and shows that the *plaintiffs* in said foreclosure suit were the trustees named in the several mortgages foreclosed.[13]

The trustees of the four mortgages under which the property was sold appointed the Chicago, Rock Island, and Pacific Railroad Company their agent to pay to the holders of the bonds their distributive shares of the proceeds of the sale.[14]

The railroad company has paid all the assenting bondholders their several shares of the five and a half millions of dollars. It has also delivered over to a receiver appointed by the court below, in the case of Mark Howard and others against the City of Davenport and others, all of that portion of the five millions five hundred thousand dollars agreed to be paid to the stockholders by the contract of November 1st, 1865.[15]

On the 27th day of December, 1866, the Chicago, Rock Island, and Pacific Railroad Company made an agreement with the Stanton committee, in which it undertook to indemnify the committee against the claims of the non-assenting stockholders.[16]

The bill, after setting out the foregoing allegations, refers to the record of the Circuit Court of the United States for the District of Iowa, in the case of *Howard et al.* v. *The City of Davenport et al.* The Chicago, Rock Island, and Pacific Railroad Company, the Chicago and Rock Island Railroad Company, the Mississippi and

13. Complainants' bill, record, p. 4, folio 15. Copy of agreement, p. 8. Copy of record in foreclosure suit, record, pp. 159 *et seq.*

14. Complainants' bill, record, p. 5.

15. Complainants' bill, record, p. 5, folio 16. Decree in Howard et al. vs. The Chicago, Rock Island, and Pacific Railroad Company, record, p. 136, folio 185. Receiver's report, record, p. 274, folio 322.

16. Complainants' bill, record, p. 5, folio 17. Copy of agreement, record, p. 11.

Missouri Railroad Company were parties defendant in said cause. The decree directed the payment of the balance remaining of the five millions five hundred thousand dollars, which was agreed to be paid to the stockholders, to the creditors of the said company.[17]

The plaintiffs, Ribon and Munoz, allege that they own non-assenting bonds, amounting to $12,500 with interest.[18]

The plaintiffs also allege that they are owners of non-assenting stock in the Mississippi and Missouri Railroad Company as follows:[19]

Ribon and Munoz	$25,400
Richard Clark	30,000
William Sohier	40,000
Sylvester Marsh	2,251
	$97,551

The Chicago, Rock Island, and Pacific Railroad Company, in 1866, and after it became the agent of the Stanton committee, purchased about seventy-five thousand dollars of the bonds of the Mississippi and Missouri Railroad Company, at a price equal to the amount to which they were entitled under the scale, and canceled the same. The only outstanding bonds of which the complainant has any knowledge, are owned by HENRY GRANNISS, HORACE TAYLOR, JOSHUA BARDWELL, HENRY S. MCCOMB, and FREDERICK A. FOSTER, all of whom are litigating their claims against the Mississippi and Missouri Railroad and the Chicago, Rock Island, and Pacific Railroad Companies.[20]

The exhibits set out in full the records of the proceedings of FOSTER, BARDWELL, and MCCOMB, to enforce the

17. Complainants' bill, record, p. 5, fol. 17. Decree in Howard et al. v. The Railroad Company et al., record, p. 138.

18. Complainants' bill, record, p. 5, fol. 18.

19. Complainants' bill, record, pp. 5 and 6, folios 19 and 20.

20. Complainant's bill, record, p. 6, fol. 19.

payment of their bonds, which proceedings involve a ratification of the sale made by the special master on the 9th of July, 1866.[21]

The complainants sue for themselves and such other shareholders *as never assented* to the terms of sale and are willing to become parties to the bill and share in the costs of suit, and also for the non-assenting bondholders.

They allege that the directors of the company neglect and refuse to apply to the court to set aside the sale under said foreclosure; that the plaintiffs never knew or heard of the agreements of the 1st and 9th of July, 1st and 10th of August, and 27th of December, until about the time of beginning this suit; and that the Mississippi and Missouri Railroad Company has ceased to do any business.

It is further averred that this suit is brought for the purpose of setting aside said foreclosure sale. The reasons assigned for not making the trustees in the several mortgages and the Stanton committee parties is, "that they have no interest whatever in the said decree or the results of the sale or the said foreclosure; that the only persons interested therein are the plaintiffs and others like them, holding non-assenting bonds and stock, and the said Chicago, Rock Island, and Pacific Railroad Company, the purchaser at said foreclosure sale and said private sale."[22]

It is also averred that the foreclosure sale, on the 9th of July, 1866, "is utterly null and void, and fraudulent in law, by reason of the said agreement of the said Chicago, Rock Island, and Pacific Railroad Company and the said Stanton, Elliott, and Wilson, trustees or agents of the assenting bondholders; that the former would purchase the property at any price they could, not exceeding five millions of dollars, and the latter in consideration thereof, agreeing not to bid at said sale, and as

21. See decree, record, p. 428.

22. Complainants' bill, record, p. 6, fol. 22.

against the non-assenting bond and stockholders, in view to the agreement to foreclose already referred to."

It is also alleged that the road, machinery, real and personal property, lands, and franchises, are worth not less than twelve millions of dollars.

The complainants pray:

1. That the foreclosure sale be set aside and held for nought.

2. That the Chicago, Rock Island and Pacific Railroad Company "may be compelled to account for the gross income of said railroad from the day of purchase to this time."

3. That said company may be required to render an account of any land sold, and the price thereof.

4. That a master may be appointed to resell said property of every kind and description sold under said decree.

5. That the proceeds of sale be applied.

(*a*). To the payment of the non-assenting bonds held by the plaintiffs, and others who come in; and the residue—

(*b*). To the plaintiffs as holders of non-assenting stock and other holders of non-assenting stock who come in.

6. That plaintiffs have such other and further relief as the nature of the case may require.

To the bill setting up this cause of action, the defendant, The Chicago, Rock Island & Pacific Railroad Company interposed a demurrer, upon the following grounds:

1. There is no equity in said bill.

2. It appears in and by the said bill, that THOMAS C. DURANT, JACOB S. WETMORE, ROBERT B. MINTURN, E. W. DUNHAM, THOMAS E. WALKER, and FRANKLIN HAVEN, trustees in the several mortgages mentioned, are necessary and indispensable parties to said bill.

3. It appears in and by said bill, that the persons interested in the distribution of the fund now in the hands of the receiver, in the case of *Howard et al.* v. *The City of*

Davenport et al., are necessary and indispensable parties to said bill.

4. There is no such case made in and by the said bill as entitles the complainants to the relief therein prayed.[23]

The court sustained the demurrer, the plaintiff declined to plead over, decree entered for the defendants on demurrer, and from this decree plaintiffs appealed.[24]

ARGUMENT.

The questions presented by the demurrer may be discussed under two general heads.

FIRST. *Is there a fatal defect of parties?*

SECOND. *Conceding that the indispensable parties are before the court, are the plaintiffs and appellants entitled to relief upon the facts disclosed by the bill and the exhibits thereto appended?*

I.

1. The plaintiffs bring their action for moneys alleged to have been due to the Mississippi and Missouri Railroad Company, a corporation of which they claim to be members. The corporation may maintain an action for a wrong done to itself—may each stockholder do the same in his own name?

While the authorities are not uniform, we believe that the best considered cases hold that the right of the stockholder to maintain an action on causes accruing to the corporation, is limited to preventive relief when an infringement of the charter or a misapplication of the corporate funds is threatened. *Dodge* v. *Woolsey*,[25] relied upon by appellant, does not go beyond this. Such relief may be invoked by one stockholder, though all others would acquiesce, because he may protect his individual

23. Demurrer to complainant's bill, record, p. 18, fol. 59.
24. Decree, record, p. 21.
25. 18 How., 341.

rights under the charter and to the corporate funds. It is otherwise as to suits to enforce existing liabilities and obligations. If one stockholder may sue for a corporate debt, every other one may maintain an action upon the same cause, and the unfortunate debtor might be compelled to defend as many suits as there are stockholders. And if a stockholder sues and is defeated, is it a bar to another action brought either by another stockholder or by the corporation? And if the action be founded upon a contract which the corporation may elect to either enforce or rescind, may one stockholder maintain an action to enforce, while another seeks a decree of nullity? This question has direct application to this case. The bonded debt amounted to over seven millions of dollars. All of the holders of this debt, except those controlling about one hundred and eighty-five thousand dollars, ratified and approved this sale before it was completed; and of the one hundred and eighty-five thousand dollars then outstanding, the record shows that all but about twelve thousand five hundred dollars have ratified the sale by seeking payment out of the proceeds. As to the lien-holding creditors seven millions four hundred and sixty-eight thousand and forty-five dollars and thirty-four cents, ratify and confirm; while twelve thousand five hundred dollars seek to cancel and annul. And how is it as to the stockholders? The capital stock amounted to three millions four hundred and fifty-two thousand five hundred dollars. The holders of only six hundred thousand dollars of this stock failed to ratify and confirm this sale, while the holders of only ninety-seven thousand five hundred and fifty-one dollars now seek to cancel and annul. If the last-mentioned class may maintain an action to cancel, may not the former maintain another to affirm and enforce? And may both of these actions be maintained in the enforcement of the rights of the corporation? If the holders of two millions eight hundred thousand dollars of the capital stock may enforce a per-

formance of the contract of sale, because the corporation might maintain such an action, and the holders of ninety-seven thousand dollars may maintain an action to cancel and annul because the corporation can maintain it—will the learned counsel tell us what is the position of the corporation—does it seek to ratify and confirm, as it may do, or does it seek to cancel and annul as it may elect to do? And what will be the effect of the decree rendered in such suits. Both classes of stockholders may be successful. In fact the record shows that, as to this sale, the affirming party, under the leadership of the counsel for appellants, has been quite successful. Now, if the annulling party under the same leader shall succeed, what is the *status* of this sale? Is it ratified and annulled—confirmed and canceled?

An injury to a corporation is not a special injury to the stockholder, but is a common injury to the whole body of the stockholders. Each stockholder may insist upon an exercise only of chartered powers and upon a proper application of the corporate funds, though every other member of the corporation may consent to the violation of the one and the misappropriation of the other. But the question as to the ratification of a void or voidable sale is quite different. If a majority of the stockholders shall be of opinion that a void sale is advantageous to the corporation, they may ratify and enforce it. That seems to be the case as claimed by the appellants. In fact the sale was neither void nor voidable.

2. But conceding for the purpose of the argument that a stockholder may assume the right of the corporation to sue upon its causes of action, the next question is, who are indispensable parties to the suit. This sale was made under a decree in foreclosure. Every person interested in the decree has a direct interest in the result of a suit brought to set it aside. The sale cannot be set aside without affecting the rights of every holder of bonds secured by the mortgages foreclosed. Yet of the $7,480,545.34 of

bonded debt, but $12,500 are represented in this suit. True, the plaintiffs invite others to join them, but show that since the sale the holders of only $185,000 of this debt have been of the class invited to join, and that so far as the non-assenting bondholders are known all of them have ratified the sale and are concluded, except the plaintiffs. The holders of this indebtedness, to the amount of $7,468,045.34, are not made parties to the suit, and are not invited to become parties. The setting aside of the sale, a re-sale of the property, and the payment of the proceeds entirely to other persons, must inevitably affect their interests. They should be represented by their trustees if not brought in in person.

To this proposition it is answered:

1. They are not necessary parties, because they may come in *if their interests are with the plaintiff.*

2. The party holding the fraudulent title is before the court, and it is not sought to impair the rights of anybody else.

3. That the trustees in the mortgage and the Stanton committee have no interest in the controversy.

4. The assenting bond and stockholders have no interest, because they have agreed to take the five and a half millions and must be content therewith.

Each and every of these several answers is based upon the theory that a court of equity will cancel this sale, without reimbursing the purchase money paid, and while enforcing the payment of a balance remaining unpaid. As is shown hereafter, the purpose of this bill seems to be to enable the creditors, and a majority of the stockholders, to keep the five and a half millions paid, while a minority seize the property sold and apply it to their own use. There will be no indispensable parties when this becomes the law of a court of equity. The presence of parties in court will not be necessary to the administration of justice.

As bearing upon the question herein discussed, we cite—

Samuel vs. Holliday, 1 Woolworth's Cir. Ct. Rep., 418.

Ang. & Ames Corp., §393.

Smith vs. Hurd et al., 12 Met., 371.

Henry vs. Veazie, 24 Me., 9.

Allen vs. Carter, 26 Conn., 460.

Hodsden vs. Copeland, 16 Me., 314.

II.

But if the indispensable parties are before the court, the case made by the bill and the exhibits does not entitle the plaintiffs to the relief prayed. Of over seven millions of bonded debt these plaintiffs represent twelve thousand five hundred dollars. Of the three millions four hundred and fifty-two thousand five hundred dollars capital stock they represent ninety-seven thousand five hundred and fifty-one dollars. The extent of their interest does not measure the modesty of their demands. They allege that the road is now worth twelve millions of dollars, and that its lands, consisting of nearly four hundred thousand acres, are worth four millions more, making the aggregate value of the property about sixteen millions. They ask that the sale under which the defendant, the Chicago, Rock Island, and Pacific Railroad Company, holds title to this railroad and these lands shall be set aside. There is not only no proposition to return the five millions and a half which it is confessed was paid for this property when the road was but half as long as it is now, but it is prayed we shall be required to account for all of the earnings of the railroad and for the proceeds of all sales of the lands, which must add a very considerable sum to the sixteen millions which is alleged to be the value of the property. While contemplating such a desire, so disastrous to the present owners of the property, it may be interesting to ascertain who will be benefited by it.

The assenting bondholders, representing over seven millions of the bonded debt, are not to be benefited. There is no proposition to let them come in and share the proceeds of a resale. The assenting holders of two millions eight hundred thousand dollars of the capital stock will not be permitted to participate. As to this class of bondholders and stockholders it is alleged that "they have no interest whatever in said decree or the results of said sale or said foreclosure; that the only persons interested therein are the plaintiffs and others like them holding non-assenting bonds and stock." This, we suppose, is upon the theory that the assenting bond and stockholders have ratified and cofirmed the sale by accepting the proceeds. The same may be said of McComb, Bardwell, and Foster, who are shown to be prosecuting claims against a portion of the purchase money.[26] The record also shows that Foster and Grannis are prosecuting their claims against the two railroad companies, but the character of the relief sought is not disclosed. The Chicago, Rock Island, and Pacfic Railroad Company has, it is alleged, purchased seventy-five thousand of the one hundred and eighty-five thousand dollars non-assenting bonds. Of course the plaintiff does not propose to let it share in the results of the proposed resale. With McComb, Bardwell, and Foster, and the seventy-five thousand dollars held by the railroad company ruled out, the number who could join the plaintiffs must be exceedingly small. The prayer is that the property be resold, that we be required to account for rents and profits, and that the sum thus produced be applied in payment of the twelve thousand five hundred dollars of non-assenting bonds, and that the balance be divided among the plaintiffs as non-assenting stockholders. The rents and profits should be more than sufficient to pay the twelve thousand five hundred dollars of non-assenting bonded debt—leaving over sixteen millions to be divided among

26. Complainants' bill, record, p. 6., fol. 19; Decree, record, p. 428.

the holders of the ninety-seven thousand dollars of non-assenting capital stock. Each share of this stock is to be increased in value sixteen thousand per cent. on its par value—certainly a beneficial result in the administration of the assets of an insolvent corporation by a court of equity. We may not dwell too long upon this. This company was insolvent in 1866. Its bonded debt was $7,478,208.04, and its capital stock $3,452,500, the aggregate of which—$10,930,708—represented the cost of its property. It was then able to contract a sale of its property for only five millions five hundred thousand dollars—$2,000,000 less than the amount of its bonded debt alone. Now it proposes to distribute to the holders of less than one hundred thousand dollars of its capital stock about sixteen millions! Has Wall street ever heard of a scheme so magnificent?—was it equaled by the grandeur of the South Sea Bubble?—does it not surpass the golden dreams which brought the ancestors of Ribon and Munoz to the New World?

But when we investigate with a view to learning how it is done, it does not seem so marvelous after all. It is proposed to leave the $5,500,000 paid by the Chicago, Rock Island, and Pacific Railroad Company in the hands of the assenting bond and stockholders. More, the portion which was set apart for the *assenting stockholders* was paid into court, in compliance with a decree procured by the counsel for appellants, who was then industriously affirming the sale by compelling a specific performance on the part of the company. (For further particulars consult the record in the case of *Mark Howard et al.* v. *The City of Davenport et al.*, set out in the record as an exhibit to the complainants' bill.) But after applying this sum according to the arrangement a balance of over two millions of bonded debt remains unpaid. These stockholding plaintiffs, with their ninety-seven thousand dollars, representing sixteen millions, propose to leave that balance unpaid because these bondholders assented

to the sale. Nor is this all; the holders of twenty-eight hundred thousand dollars of the capital stock, who surrendered their stock as a part of the arrangement of sale and with the agreement that they should receive sixteen per cent. of its par value from the proceeds of the sale, shall be dismissed with what remains after the creditors are paid. This record shows how successfully one brother Grant has been in wresting this from them that it might be applied in the payment of the debts of the company on contracts of guaranty. The sixteen per cent. has never been realized by them, and is in such condition that a considerable portion of it will be applied to other uses. They are not to have the sixteen per cent. while the plaintiffs secure the sixteen thousand per cent. It will be interesting to see how this is to be done in a court in which equality is equity—in which sales are usually rescinded only after the parties are placed in *statu quo*.

We state the appellant's proposition in his own language:[27]

> When the sale was about to take place the Chicago, Rock Island, and Pacific Railroad Company, created by the Chicago and Rock Island Railroad Company, for that purpose, made a fraudulent agreement with the trustees or committee, that the latter should not bid at the foreclosure sale, and that they would bid, not the five and a half but as high as five millions, and then pay the five and a half to the assenting parties. And in consideration of this the committee agreed not to bid at the sale.

This embraces the entire ground of complainants' case. The record which the appellant made a part of his bill shows that the foregoing assertion has no foundation in fact.

It is alleged, first, that the agreement was a fraudulent one. The contract which it is claimed avoids this sale is set out, not only in the record, but in appellant's argument and in the foregoing statement of the case.[28]

It refers to certain articles of agreement made by the said Mississippi and Missouri Railroad Company with the

27. See appellant's argument, p. 17, first par.
28. Record, p. 9. Appellant's argument, pp. 12 to 14 inc.

Chicago, Rock Island, and Pacific Railroad Company, dated Nov. 1st, 1865, and declares that the purchase "shall be made in trust, to carry out in good faith" said agreement.[29] The agreement referred to is set out in the record as a part of the exhibits to the bill, and will be found on page 61. It was an agreement between the two railroad companies—the Mississippi and Missouri and the Chicago and Rock Island—in which the former undertook to cause all the mortgages on its line of road to be foreclosed, so that the purchaser should be able to transfer "a perfect and unencumbered title to such incorporated company in Iowa as the Chicago and Rock Island Company may designate to become the purchaser and owner thereof." It is expressly recited that this agreement was made "in pursuance of certain resolutions passed by a meeting of the bondholders and stockholders of the Mississippi and Missouri Railroad Company, held in the city of New York on the 20th day of October, 1865." We have stated the resolutions of that meeting, and have shown the appointment of a committee consisting of GEORGE W. STANTON, JR., JOHN ELLIOTT, and BLAKELY WILSON, charged with the duty of carrying this scheme of sale into effect. The appellant also sets out as an exhibit to his bill the contract between the said committee and the assenting bond and stockholders, and it will be found on pages 65 and 66 of the record. In that agreement the committee undertook to use "all diligence in foreclosing the mortgages now encumbering the title of the Mississippi and Missouri Railroad Company to its property, to convey the same after such foreclosure, as more fully set forth in the agreement between the Chicago and Rock Island Railroad Company and the Mississippi and Missouri Railroad Company, hereinbefore referred to, for five millions five hundred thousand dollars."

Now, what was the situation before the contract of which the appellant complains was made? The Stanton

29. Record, p. 9, fol. 32.

committee undertook, in the execution of the contract between the two railroad companies, to purchase the property at the foreclosure sale, and convey it, after such purchase, to such company as the Chicago and Rock Island Company should designate, and the Chicago and Rock Island Railroad Company had caused the Chicago, Rock Island and Pacific Railroad Company to be incorporated in Iowa, for the purpose of becoming the purchaser of the road from the committee. The committee and the new company were not competitors at the sale, but the committee was to acquire the foreclosure title and convey it to the new company in consideration of five millions five hundred thousand dollars to be paid. The agreement of July 3d provided that instead of the committee becoming the bidder at the sale, and making the conveyance to the new company, the property should be bid in by the new company, and the title held in trust until the purchase money should be paid in accordance with the terms of the agreement between the two railroad companies and between the bond and stockholders and the Stanton committee. Instead of the committee making the purchase and conveying the title to the new company upon receiving the five and one-half millions of dollars, the new company became the bidder, and undertook to convey the title to the committee if the five and one-half millions were not paid as stipulated. This is made manifest by the explanatory memorandum entered into between the parties at Davenport on the 9th of July, found in the record on page 339, and set out in the foregoing statement of the case.

This explanatory agreement is an exhibit to the bill which was the subject of the demurrer relied upon. If the agreement that the bid should be made by the company, and the title held in trust for the committee which undertook to pay the purchase-money, was fraudulent, the agreement that the property should be purchased by the committee and conveyed to the company was also

fraudulent, for the new agreement did not change in equity the relation of the parties. While the title was in the company after the purchase, it was held in trust for the committee. The contract of July 3rd did not discourage competition because there was no competition between the parties. The company preferred a title under the master's deed without the interposition of conveyances to and by the committee. At that time the expenses of conveying large amounts of property were heavy because of stamp duties. In these considerations the only purpose of this contract is found.

But it is said that the company did "not bid five and a half millions," but bid only five millions, and paid "the five and a half to the assenting parties." This is not correct. The Chicago and Rock Island Railroad Company undertook to pay for a perfect, unincumbered title, to be acquired by a foreclosure sale, the sum of five and one-half millions of dollars. The scale agreed upon for a distribution of this purchase-money was as follows:

To the holders of bonds secured by the first mortgage of the eastern division of the Mississippi and Missouri Railroad, par, for principal debt and income bonds, and interest accrued to July 1st, 1865; *to the holders* of bonds secured by a second mortgage on the last-mentioned division, eighty per cent. of the principal debt; *to the holders* of bonds secured by a second mortgage on the last-mentioned division, eighty per cent. of the principal debt; *to the holders* of bonds secured by a mortgage on the Oskaloosa division and income bonds and scrip, sixty-two and a half per cent. of principal debt; *to the holders* of bonds secured by what is known as land-grant first mortgage income bonds and scrip outstanding, seventy per cent. of the principal debt; *to the holders* of bonds secured by the second construction mortgage, so called, and scrip, thirty per cent. of the principal debt; *and to the holders* of stock sixteen per cent. of the par value of their shares; and to distribute the balance of the purchase-money and the interest thereon at seven per cent., from December 1, 1865, if any remain after discharging the expenses of foreclosure and sale, according to the scale of apportionment herein above mentioned.[29]

The distribution is not limited to the assenting parties. It was to be made to *all* stockholders and *all* bondholders. The amount to be paid by the company to the committee

29. Record, p. 65.

was fixed at five and a half millions without regard to the amount bid at the sale.

If the contract of July 1st had never been entered into, the position of these parties would not be different. They would have been entitled to their shares of the five and half millions, according to the scale; and their right to these shares has not been abridged, nor the amounts thereof reduced.

The authorities cited have no application. The counsel state the principle correctly: "Any agreement or combination, the *object and effect* of which is to stifle competition, is illegal, and no party to the agreement can derive any benefit from the sale." The principle has no application to this case, for the illegal "*object and effect*" are absent. Under the pre-existing arrangements and agreements, the railroad company would not be a bidder at the sale; had the agreement never been made, the *effect* would have been the same. In the end the company would have received the title for the same compensation. The agreement obviated one conveyance.

It is claimed by appellant in his argument that the "fraudulent intent and all other allegations to give this jurisdiction" are conceded by the demurrer. This is disputed. True, the allegations of the bill are to be taken as true in the consideration of the demurrer; but unfortunately for the appellant his voluminous exhibits, which are a part of his bill, show fully the transaction and demonstrate not only a lawful purpose, but a legitimate contract.

The bill also shows that on the 9th of July, 1866, creditors of the Mississippi and Missouri Railroad Company filed a bill in the Circuit Court of the United States for the District of Iowa, seeking to apply a portion of the proceeds of the sale now assailed to the payment of the debts of the Mississippi and Missouri Railroad Company. To the bill the City of Davenport, the Mississippi and Missouri Railroad Company, the Chicago and Rock Isl-

and Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Wilson, and the Chicago, Rock Island, and Pacific Railroad Company, were defendants. We find in this bill the following averments:

> The plaintiff does not make the said stockholders parties to the bill because the stock is divided into thirty-four thousand shares and upwards; very few of the stockholders reside in Iowa; none of them are known to be citizens of Iowa; it is impossible to make them all parties, *and their interest is represented fully by their corporate body—the Mississippi and Missouri Railroad Company.*[30]

After reciting the contracts above mentioned the bill continues:

> The franchises and all the property of the Mississippi and Missouri Railroad Company were sold under said decree of foreclosure, on the 9th day of July, 1866, and the said Chicago, Rock Island, and Pacific Railroad Company became the purchaser, under the agreement herein named, for the sum of two millions two hundred thousand dollars; and said sale is confirmed by this court. The Mississippi and Missouri Railroad Company has, except for the purposes of closing its business, ceased to exist, and abandoned the purpose for which it was created. *The said sum of two millions two hundred thousand dollars, bid at said sale, was not paid down, but the trustees, plaintiffs in that suit, gave a receipt to the officer conducting the sale, without actual payment,* AND THE SAID SUM IS TO BE PAID AS PART AND PARCEL OF THE FIVE AND ONE-HALF MILLIONS OF DOLLARS, THE CONTRACT PRICE BETWEEN THE SAID RAILROAD COMPANY AND THE CHICAGO AND ROCK ISLAND RAILROAD COMPANY, UNDER THE CONTRACT OF NOVEMBER 1ST, 1865, AND AS A PART OF SAID SUM IS TO BE PAID TO THE PARTIES, and in the manner required by said contract, and the resolutions of the stock and bondholders of the 20th October, 1865, by which sixteen per cent. is to be paid on each share of stock.[31]

We respectfully submit that if the interests of the stockholders "were fully represented by their corporate body" the decree against "their corporate body" is as binding upon them as if rendered against them individually. The decree on the issues joined on that bill was a virtual affirmance of the whole scheme of sale, made upon allegations showing that the amount bid at the sale was nominal merely, the five and a half millions agreed to be paid in the contracts between the two companies being the real consideration. This bill, which is among the

30. Record, p. 31.

31. Record, p. 30, fol. 81.

exhibits to the complainants' bill, is none the less valuable because it bears the signature of the learned counsel for the appellants. When the cause was appealed to this court an able argument was filed by Grant and Rogers for the appellee, from which we copy:

> The foreclosure and sale thereunder were simply the form of conveyance, executed and agreed upon by the parties, and effected in pursuance and execution of the contract. They have the same relation to the real transaction which the forms of a fine or common recovery (when those ancient modes of conveyance were in use) bore to the real contract in pursuance of which they were gone through with.[32]

Again:

> If the stockholders were necessary parties, it amounts to a denial of justice; for it was impossible to make them parties. Their number was very great; their names were unknown to the complainants, and many, without doubt, resided beyond the reach of the process of the court. But on no principle were they necessary parties. Their rights and interests are doubly represented by the parties brought before the court, viz: 1st, *by the corporation itself, the Mississippi and Missouri Railroad Company*, of which they were members; 2d, by their own committee, chosen and appointed by themselves.[33]

Mr. Justice CLIFFORD, in delivering the opinion of the court, said:

> Another suggestion of the appellant is that the contract of sale was unauthorized, but the suggestion is entitled to no weight, *as the contract was ultimately carried into effect by the consent, or subsequent ratification of all parties interested in the subject-matter of the sale.*
>
> Next objection is that there is such a want of parties that a court of equity cannot grant the relief as prayed. Principal suggestion in support of this proposition is that the stockholders should have been made parties, but the court is of a different opinion, because their interest is fully represented by the parties before the court. Respondents in the suit are two railroad companies and the committee or trustees chosen and appointed by the stockholders and bondholders, through whom the provisional arrangement was perfected and the contract of sale carried into effect.[34]

It only remains to ask: Could the Mississippi and Missouri Railroad Company maintain this action? Would a court of equity, in view of all the circumstances, the various agreements to which it was a party and the fact

32. 7 Wall., p. 402.
33. 7 Wall., 406.
34. 7 Wall., 415.

that it was a party to the suit of Howard and others against the City of Davenport and others, grant the prayer of this petition on its application? If the railroad company would not be entitled to relief, the stockholders therein are concluded.

THOS. F. WITHROW,
For the Defendant and Appellee.